

**Exhibit 2, pt. 2**  
**Declaration of Rae Lovko**

## **EXHIBIT O**


Exhibits - Clio - Google x | 2023-10-27 Notice - Google x | Goree cream - Etsy x | Day & Night Beauty Cream x | 6 X Goree Day and Night x | +

etsy.com/listing/1383565547/day-night-beauty-cream?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga\_search\_query=goree...

Etsy Categories Search for anything

Homepage > Bath & Beauty > Skin Care > Facial Care

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Only 1 left and in 7 carts

**\$24.00**

Day & Night Beauty Cream

ObserverFinds ★★★★★

✓ Arrives soon! Get it by Oct 31-Nov 9 if you order today

Buy it now | VISA ...0961

Add to cart

♥ Add to collection

Item details

Handmade

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Handmade

In Stock 1 pcs

Only one cream.

#### Shipping and return policies

Order today to get by Oct 31-Nov 9

Returns & exchanges not accepted

Cost to ship: \$4.44

Enjoy free shipping to the US when you spend \$35+ at this shop.

Deliver to United States, 94703

Ships from Upper Marlboro, MD

Etsy offsets carbon emissions from shipping and packaging on this purchase.

Etsy Purchase Protection: Shop confidently on Etsy knowing if something goes wrong with an order

#### Other reviews from this shop | ★★★★★ (2)

Sort by: Suggested

★★★★★

Purchased item: Day & Night Beauty Cream



Marisa Dumbrigue Apr 22, 2023

Item quality

5.0

Shipping

5.0

Customer service

5.0





Purchased item: [Day & Night Beauty Cream](#)



[Marisa Dumbrigue](#) Apr 22, 2023

Item quality



5.0

Shipping



5.0

Customer service



5.0



**Etsy Purchase Protection:** Shop confidently on Etsy knowing if something goes wrong with an order, we've got your back for all eligible purchases — [see program terms](#)

Meet your sellers



Paul

Owner of [ObserverFinds](#)

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ObserverFinds made this item with help from Goree, Pakistan

You may also like including Ads

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etsy.com/listing/1383565547/day-night-beauty-cream?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga\_search\_query=goree...

 <p>7D Set, Hyper Brightening S... Ad by Etsy seller</p> <p><b>\$202.71</b> FREE shipping</p>	 <p>Beauty milk Ad by Etsy seller</p> <p><b>\$18.99</b> FREE shipping</p>	 <p>Milk Butter Creams, Body Cr... Ad by Etsy seller</p> <p><b>\$16.00</b></p>	 <p>TINA TONER 7 day Moisturiz... Ad by Etsy seller</p> <p><b>\$65.00</b> FREE shipping</p>	 <p>Maximum Kojic Acid Alpha ... Ad by Etsy seller</p> <p><b>\$34.99</b></p>	 <p>BeBe Special Cream (6 Unit... Ad by Etsy seller</p> <p><b>\$69.99</b> FREE shipping</p>
 <p>White Fade Cream, Super H... Ad by Etsy seller</p> <p><b>\$49.99</b> FREE shipping</p>	 <p>6 pack la milagrosa crema a... Ad by Etsy seller</p> <p><b>\$93.00</b> FREE shipping</p>	 <p>Nu Skin Nutricentials Dew A... Ad by Etsy seller</p> <p><b>\$42.99</b></p>	 <p>Buy 1, GET 2 FREE** T.taio es... Ad by Etsy seller</p> <p><b>\$10.00</b> FREE shipping</p>	 <p>Rapid Tone Repair Correctin... Ad by Etsy seller</p> <p><b>\$30.00</b></p>	 <p>Retinol Night cream / Anti A... Ad by Etsy seller</p> <p><b>\$26.36</b> <del>\$32.95</del> (20% off) FREE shipping</p>
 <p>6 Pieces</p> <p>etsy.com/listing/1272694658/faiza-beauty-cream-from-pakistan-100?click_k...</p>	 <p>3 Pieces</p>				

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Exhibits - Clio - Google	2023-10-27 Notice - Google	Goree cream - Etsy	Day & Night Beauty Cream	6 X Goree Day and Night	
etsy.com/listing/1383565547/day-night-beauty-cream?ga_order=most_relevant&ga_search_type=all&ga_view_type=gallery&ga_search_query=goree...					
6 x ( Goree ) Day and Night ... PakistanShop2023	3 x ( Goree ) Day and Night ... PakistanShop2023	Parley Goldie Cosmetics ori... GoldieCosmetics	JAR of Faiza Beauty Cream F... IMinoosh	Faiza Beauty Cream From P... DiamondsGroup	100% Original Faiza Beauty ... Creations4all786
<b>\$47.49</b> <del>\$49.99</del> (5% off) FREE shipping	<b>\$28.49</b> <del>\$29.99</del> (5% off) FREE shipping	<b>\$17.66</b>	<b>\$28.51</b> <del>\$31.67</del> (10% off)	<b>\$11.39</b>	<b>\$10.83</b>

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goree

## Explore more related searches

daynight



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## **EXHIBIT P**



Etsy

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In 20+ carts

**\$47.49** ~~\$49.99~~

5% off sale for a limited time

6 x ( Goree ) Day and Night made in Pakistan original

PakistanShop2023 ★★★★★

✓ Returns & exchanges accepted

Check out with **PayPal**

Add to cart

♥ Add to collection

Item details



Search

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**Bestseller**

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5% off sale for a limited time

6 x ( Goree ) Day and Night made in Pakistan original

PakistanShop2023 ★★★★★

✓ Returns & exchanges accepted

Check out with **PayPal**

Add to cart

♥ Add to collection

Item details ^

👤 Handmade

6 x ( Goree ) Day and Night made in Pakistan original.

Other reviews from this shop | ★★★★★ (47) Sort by: Suggested ▼

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**Bestseller**



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5% off sale for a limited time

6 x ( Goree ) Day and Night made in Pakistan original

PakistanShop2023 ★★★★★

✓ Returns & exchanges accepted

Check out with **PayPal**

Add to cart

♥ Add to collection

Item details ^

👤 Handmade

6 x ( Goree ) Day and Night made in Pakistan original.


Other reviews from this shop | ★★★★★ (47) Sort by: Suggested ▾

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**Bestseller**



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**Bestseller**



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**Bestseller**



**SALIENT FEATURE:**  
GOREE DAY & NIGHT Beauty Cream is a combination of synthetic and organic ingredients. It is the best skin lightener with optimal skin penetrating base.

**INGREDIENTS:**  
Lycopene, Malva Sylvestris Extract, Primula Veris Extract, Alchemilla Vulgaris Extract, Veronica Officinalis Extract, Melissa Officinalis Extract, Niacinamide (Vitamin B3), Glycerin, Arbutin, Allantoin, Vitamin E, Pantothenol, Cetostearyl Alcohol, Cetyl Alcohol, Glyceryl monostearate PEG100 distearate, Preservative, Disodium EDTA, Deionized Water, Fragrance.

**HOW TO USE:**  
After cleansing your face with GOREE face wash, apply cream over your face and neck at night and day time.

**PRECAUTIONS:**

- Avoid sun exposure while using GOREE Day & Night Beauty Cream
- Avoid contact with eyes and open wounds.
- Do not apply armpit or any other sensitive area.
- Stop the cream, If redness or hypersensitivity occurs contact your physician.
- Keep away from children.
- Store in cool and dry place.

**\$47.49** ~~\$49.99~~  
**5% off sale for a limited time**

6 x ( Goree ) Day and Night made in Pakistan original

PakistanShop2023 ★★★★★

✓ Returns & exchanges accepted

Check out with **PayPal**

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**\$47.49** ~~\$49.99~~  
5% off sale for a limited time

6 x ( Goree ) Day and Night made in Pakistan original

PakistanShop2023 ★★★★★

✓ Returns & exchanges accepted

Check out with **PayPal**

Add to cart

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Item details ^

👤 Handmade

6 x ( Goree ) Day and Night made in Pakistan original.

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### Other reviews from this shop | ★★★★★ (47) Sort by: Suggested ▼

★★★★★

Delivered too fast,thanks,i will buy it again 🥰🥰🥰🥰

Purchased item: [6 x \( Goree \) Day and Night made in P...](#)

[Ronwaldo V Diaz](#) Sep 5, 2023

Item quality 5.0

Shipping 5.0

Customer service 5.0

★★★★★

Item met quality expectations, shipping was fast and good, definitely will order again, reliable, and service was good too, nice stuff 👍👍👍👍👍

Purchased item: [3 x \( Goree \) made in Pakistan original](#)

[Doaa Saad](#) Oct 3, 2023

Item quality 5.0

Shipping 4.0

Customer service 5.0

★★★★★

This seller is just so awesome! I received my items so quick!!! At first, they sent me the wrong item but as soon as I messaged them to let them know that ... ⋮

Purchased item: [6 X \(Goree\) Original Made in Pakistan](#)

[Ann Golez Stull](#) Jul 11, 2023

Item quality 5.0

Shipping 5.0

Customer service 5.0

### Shipping and return policies

Order today to get by Nov 15-28

Returns & exchanges accepted within 30 days

Free shipping

Deliver to United States, 94703 ▼

Ships from Pakistan

Etsy offsets carbon emissions from shipping and packaging on this purchase.

View shop policies

### Meet your sellers

**Muhammad**  
Owner of [PakistanShop2023](#)

Exhibits - Clio - Google

2023-10-27 Notice - Go

Goree cream - Etsy

Day & Night Beauty Cre

6 X Goree Day and Nigh

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← → ↻ 🔒 etsy.com/listing/1511482222/6-x-goree-day-and-night-made-in-pakistan?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga\_...




Ann Golez Stull Jul 11, 2023

★★★★☆

This Goree Cream that I received is not original and please ask for my money back

Purchased item: [6 x \(Goree\) made in Pakistan original](#)



Ramesh Bakhshi Sep 12, 2023

←

1


2

...

12

→

Photos from reviews



Arriving on 20-29 Jun

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This seller usually responds within a few hours.





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



























4:23 PM 10/27/2023 12



## More from this shop



3 x ( Goree ) Day and Night ...  
PakistanShop2023

**\$28.49**  
\$29.99 (5% off)  
FREE shipping



Meibomian Gland Eye Force...  
PakistanShop2023

**\$28.49**  
\$29.99 (5% off)  
FREE shipping



Dental Orthodontic Arrow C...  
PakistanShop2023

**\$37.99**  
\$39.99 (5% off)  
FREE shipping



Arita Meibomian Gland Co...  
PakistanShop2023

**\$33.24**  
\$34.99 (5% off)  
FREE shipping



Dental Implant Depth Gaug...  
PakistanShop2023

**\$33.24**  
\$34.99 (5% off)  
FREE shipping

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Milk Butter Creams, Body Cr...  
Ad by Etsy seller

**\$16.00**



Kojic + Turmeric Moisturizer...  
Ad by Etsy seller

**\$14.99**

Bestseller



Turmeric Soap, Body Butter ...  
Ad by Etsy seller

**\$34.99**

Eligible orders get 10% off  
FREE shipping



TINA TONER 7 day Moisturiz...  
Ad by Etsy seller

**\$65.00**

FREE shipping



BeBe Special Cream (12 Unit...  
Ad by Etsy seller

**\$119.99**

FREE shipping



Moroccan Black Soap Orga...  
Ad by Etsy seller

**\$82.00**

FREE shipping



Sulfur Soap | Joesoef Skin C...  
Ad by Etsy seller

**\$39.99**

FREE shipping



6 pack la milagrosa crema a...  
Ad by Etsy seller

**\$93.00**

FREE shipping



White Fade Cream, Super H...  
Ad by Etsy seller

**\$49.99**

FREE shipping



LADIES SHINE  
Ad by Etsy seller

**\$79.99**

FREE shipping



https://www.etsy.com/listing/1564825446/white-fade-cream-super-hidratante?click\_key=9d34873d25ac3277b761de3e2ba1c3d3aed41e00%3A1564825446&click\_sum=85ba57e2&ref=internal-recs-506277-11&frs=1





Day & Night Beauty Cream  
ObserverFinds

\$24.00



Parley Goldie Cosmetics ori...  
GoldieCosmetics

\$17.66



Goree Beauty Cream  
Aruniamu

\$17.40



Faiza Beauty Cream From P...  
DiamondsGroup

\$11.39



JAR of Faiza Beauty Cream F...  
IMinoosh

\$28.51  
~~\$31.67~~ (10% off)



BeBe Special Cream (6 Unit...  
Apsarabazaars

\$69.99  
FREE shipping

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creams



cream

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Goree cream - Etsy

Day & Night Beauty Cre

6 X Goree Day and Nigh

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## **EXHIBIT S**


Exhibits - x 2023-10-2 x E Nunn care x E Nun Care x E Nunn Care x E Nunn Care x E Nunn Care x E 3 Pck Cren x +

etsy.com/listing/1498005215/nun-care-6-pack-old-version?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga\_search\_query=nunn...

Etsy Categories Search for anything

Homepage > Bath & Beauty > Skin Care > Facial Care > Facial Toner

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6 PACK

NUNN CARE  
CREMA LIMPIADORA

\$97.00


Nun care 6 pack (old version)

Menwomengiftshop ★★★★★

Ships from California

✓ Arrives soon! Get it by Oct 30-Nov 6 if you order today

Pay in 4 installments of \$24.25. Klarna. [Learn more](#)

Buy it now |  ...0961

Add to cart

♥ Add to collection

Item details


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etsy.com/listing/1498005215/nun-care-6-pack-old-version?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga\_search\_query=nunn...



Nun care 6 pack (old version)  
Menwomengiftshop ★★★★★

📍 Ships from California  
✓ Arrives soon! Get it by Oct 30-Nov 6 if you order today

Pay in 4 installments of \$24.25. **Klarna**. [Learn more](#)

Buy it now | **VISA** ...0961

Add to cart

❤ Add to collection

Item details ^

👤 Handmade

📍 Ships from California! Shorter shipping distances are kinder to the planet

nun care hydrating whitening cream night day


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Exhibits - 2023-10-2 Nunn care Nunn Care Nunn Care Nunn Care Nunn Care 3 Pck Cren

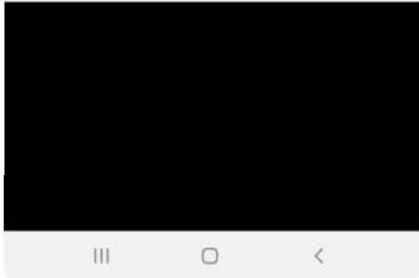
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10:03 51%









Nun care 6 pack (old version)

Menwomengiftshop ★★★★★

Ships from California

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★★★★★  
I'll be sure to order more from you. Thank you.  
Purchased item: [Gelmicin 3 pack](#)  
 [Crystal Moon](#) Oct 25, 2023

Item quality 5.0  
Shipping 5.0

★★★★★  
Great, quality new item at a good price  
Purchased item: [Gelmicin 3 pack](#)  
 [Sandra](#) Oct 24, 2023

Item quality 5.0  
Shipping 5.0  
Customer service 5.0

★★★★★  
Perfect, fast shipping!! Would order again!  
Purchased item: [Gelmicin 3 pack](#)  
 [Kristi Schmalzried](#) Oct 17, 2023

Item quality

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★★★★★  
Exactly what I needed - thank you.  
Purchased item: [Gelmicin 3 pack](#)  
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HOW IS THE CREAM USED?

Clean the area to be applied with Nunn Care cleansing cream with neutral soap (that does not contain perfumes or creamy essences) and dry

Learn more about this item

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#### HOW IS THE CREAM USED?

Clean the area to be applied with Nunn Care cleansing cream with neutral soap (that does not contain perfumes or creamy essences) and dry gently.

IN THE MORNING, apply a light layer and once dry you can apply makeup on top or use the powder of your choice.

AT NIGHT: Before going to sleep, repeat step 1 and then apply a generous layer.

#### HOW DO I CHECK THE AUTHENTICITY OF YOUR CLEANSING CREAM?

Scan the QR code that is printed on the packaging, it will take you to a page where you are asked for the information about your cream to validate its authenticity. If it turns out to be pirated or you have any problems confirming it, contact us.

Ingredients:

Water, Mineral Oil, Sorbitol, Isopropyl Palmitate, Isopropyl Myristate, Cetostearyl Alcohol and Ceteareth-20, Beeswax, Glycerin, Paraffin, Decyl Oleate, Candelilla Wax, Collagen, Zinc Hyalurate, Tocopherol Acetate (Vitamin E) , Glyceryl Monostearate, Microcrystalline Wax, Stearic Acid, Propylene Glycol, Lanolin, Lanolin Alcohol, DMDM Hydantoin, Methylchloroisothiazolinone, Methylisothiazolinone, Trietanolamine, Aluminum Stearate, Magnesium Stearate, Fragrance, Panthenol, Citric Acid, Potassium Sorbate.

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


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










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Nunn Care Crema aclaradora para manchas en la cara Nueva Presentación / remover fine lines


naturallylifee ★★★★★

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 Idania Apr 22, 2022

★★★★★

Very good service at all time

Purchased item: [Nunn Care Crema aclaradora para manchas en la cara N...](#)

 Aurora Serrato Jul 10, 2022

envejecimiento, aclaradora de piel, ayuda en el tratamiento de líneas de expresión y manchas de sol!

Nunn Care cream is a clarifying , purifying facial cream that may help with Acne, Acne scars, dark spots, wrinkles!

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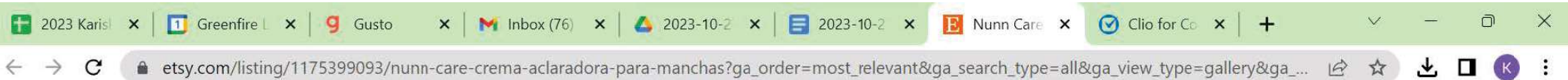
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\$16.00

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TruVaShopTreasures

\$30.00



Nun care 6 pack (old version)  
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Bulkmayoreo99

\$93.00

FREE shipping



Jabón poderoso + Nunn car...  
Menwomengiftshop

\$33.00



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Bulkmayoreo99

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## **EXHIBIT V**

2023 Karis | Greenfire | Gusto | Inbox (76) | Exhibits - | 2023-10-2 | Nunn Care | Clio for Co

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Antes y después

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TruVaShopTreasures ★★★★★


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Antes y después

NUN CARE  
CREMA LIMPIADORA • CLEANSING CREAM

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Nunn Care (1 Crema) 100% Original De Mazatlan Sin.

TruVaShopTreasures ★★★★★

✓ Arrives soon! Get it by Nov 3-14 if you order today

✓ Returns & exchanges accepted

Buy it now | VISA ...0961

Add to cart

♥ Add to collection

Item details

Handmade

Volume: 1 fluid ounces

NUN CARE, crema limpiadora, aportará la hidratación necesaria para que tu piel luzca radiante siempre. Ayudará a mitigar los efectos negativos de la exposición diaria al ambiente, polvo, contaminación y rayos del sol en tu piel.

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**Crema**

Atenúa efectos adversos de la acumulación de impurezas limpia, removiendo impurezas acumuladas en tu piel evita el envejecimiento prematuro equilibra el tono natural de tu piel.

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Item details ^

Handmade

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Other reviews from this shop | ★★★★★ (2) Sort by: Suggested ▼

★★★★★

I was disappointed, a discount of \$10.00 flash on when I selected this item and with Free Shipping for Prime Members and I didn't receive any discounts. I want to...

Purchased item: B'Oro crema limpiadora (2 cremas, 1 regul...

Sign in with Apple user Oct 19, 2023

Item quality 3.0

Shipping 1.0

★★★★★

Purchased item: B'Oro crema limpiadora (2 cremas, 1 regul...

Sign in with Apple user Aug 19, 2023

Item quality 5.0

Shipping 5.0

Customer service 3.0

Shipping and return policies

Order today to get by Nov 3-14

Returns & exchanges accepted within 30 days

Cost to ship: \$11.00

Deliver to United States, 94703 ▼

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Owner of TruVaShopTreasures

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Nunn Care Crema aclaradora p...  
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FREE shipping



Nun care 6 pack (old version)  
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## **EXHIBIT W**

2023 Karis | Greenfire | Gusto | Inbox (76) | Exhibits - | 2023-10-2 | 3 Pck Crema Nunn Care 100 Mexicana | Clio for Co


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**\$2.75**  
Only 2 available and it's in 1 person's cart




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Ad by bulkmayoreo99  
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FREE shipping




Buy 1, GET 2 FREE\*\* T.taio espo...  
Ad by ArtOfMexico20  
**\$10.00**  
FREE shipping




Nunn Care Crema aclaradora p...  
Naturallylifee  
**\$31.50**  
FREE shipping




Nunn care cream  
Wellnessrootsstore  
**\$31.99**  
FREE shipping



Nunn Care (1 Crema) 100% Orig...  
TruVaShopTreasures  
**\$30.00**



Only 2 left and in 5 carts  
**\$94.89**  
3 pck Crema Nunn Care 100% MEXICANA  
BotanicaMexicana ★★★★★  
Ships from California  
Returns & exchanges accepted  
Pay in 4 installments of \$23.72. **Klarna.** [Learn more](#)




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Only 2 left and in 5 carts

**\$94.89**

3 pck Crema Nunn Care 100% MEXICANA

BotanicaMexicana ★★★★★

Ships from California

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Buy it now | **VISA** ...0961

Add to cart

♥ Add to collection

Item details ^

Handmade





Ships from California! Shorter shipping distances are kinder to the planet


Nunn Care Milagrosa Limpiadora Blanqueadora  
ORIGINAL Quita Manchas, Paño  
3-pack



Related searches


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Only 2 left and in 5 carts

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3 pck Crema Nunn Care 100% MEXICANA

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3-pack


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


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3-pack

Related searches



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### Other reviews from this shop | ★★★★★ (11)

Sort by: Suggested ▼


★★★★★  
It took a whole month for the item to get here, and it didn't arrive completely!!

 Response from Hugo  
Hello, I have replied to your message regarding this order and the order was only for a ONE 3 pack of Nun care, please review invoice I was forwarded. 1 item 3 pck...

Purchased item: [3 pck Crema Nunn Care 100% MEXICANA](#)

 Jesus Torres Sep 20, 2023

★★★★★  
Terrible quality it's literally something a 6 year can print and draw this is a total scam:( this is not fair for what I payed this is not ok what can the seller do this is bad really bad

 Response from Hugo  
Hello, I deeply apologize about this, most likely you received a

Item quality 1.0  
Shipping 1.0  
Customer service 1.0

Item quality 1.0  
Shipping 1.0  
Customer service 1.0

ORIGINAL Quita Manchas, Paño  
3-pack

### Shipping and return policies

Order today to get by Nov 7-16

Returns & exchanges accepted within 7 days


Cost to ship: \$6.81

Deliver to United States, 94703 ▼  
Ships from San Diego, CA

Etsy offsets carbon emissions from shipping and packaging on this purchase.

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 Hugo  
Owner of BotanicaMexicana  
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11/1/2023


11

2023 Karis x Greenfire L x Gusto x Inbox (76) x Exhibits - x 2023-10-2 x 3 Pck Cren x Clio for Co x +

etsy.com/listing/1405938763/3-pck-crema-nunn-care-100-mexicana?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga\_...

Purchased item: [Baraja Gitana Autentica Mexicana Gypsy...](#)




 [Nancy Rios](#) Sep 27, 2023

★★★★★


Hello good afternoon my order has not arrived I need my refund please thank you very much

See in original language

 Response from Hugo


Hello good afternoon Marisela I hope you are well. I am very sorry for the delay in your order since USPS was unable to register the package and it had to be reshipped. Here I leave a coupon for the inconvenience, and I hope that the creams have been to your liking. Take ca... ⋮

Purchased item: [Nunn Care Milagrosa Limpiadora Banqueadora ORIGINAL Quit...](#)

 [Sign in with Apple user](#) Apr 4, 2023

← 1 2 ... 4 →

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La Milagrosa desde Mazatlan Si...  
Ad by Etsy seller  
**\$19.99**  
Bestseller



Handmade La Milagrosa Crema ...  
Ad by Etsy seller  
**\$31.00**



12 Units Day Cream SPF 40, UV...  
Ad by Etsy seller  
**\$119.99**  
FREE shipping



Best Selling , Fast strong pure , ...  
Ad by Etsy seller  
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~~\$38.00~~ (30% off)



Nyx (The Goddess of the Night)...  
Ad by Etsy seller  
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Best Sellers Sampler Kit: Try Ou...  
Ad by Etsy seller  
**\$34.00**  
FREE shipping



Safran Cream| La Vallee Creme ...  
Ad by Etsy seller  
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All Natural Skin Care, Coffee Un...  
Ad by Etsy seller  
**\$17.06**



Jafra Royal Defy Ritual 5 pieces  
Ad by Etsy seller  
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FREE shipping



Organic Face Minerals / Himala...  
Ad by Etsy seller  
**\$18.25**



Beauty Facial Mask Kit / Make Y...  
Ad by Etsy seller  
**\$35.00**  
FREE shipping



Anti Aging Eye Cream/Retinol +...  
Ad by Etsy seller  
**\$23.96**  
~~\$31.95~~ (25% off)  
FREE shipping



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Nunn Care (1 Crema) 100% Orig...  
TruVaShopTreasures  
**\$30.00**



6 pack la milagrosa crema aclar...  
Bulkmayoreo99  
**\$93.00**  
FREE shipping



Nun care 6 pack (old version)  
Menwomengiftshop  
**\$97.00**  
FREE shipping



La Milagrosa desde Mazatlan Si...  
Bulkmayoreo99  
**\$19.99**



Handmade La Milagrosa Crema ...  
NATURALbyLLC  
**\$31.00**



Jabón poderoso + Nunn care cr...  
Menwomengiftshop  
**\$33.00**

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## **EXHIBIT X**



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**Etsy**  Categories       

Homepage > Bath & Beauty > Skin Care

← Back to search results




**In 7 carts**


**\$39.99**

CCM Cream (3 Units) FREE SHIPPING


Apsarabazaars ★★★★★


 Ships from California


✓ Arrives soon! Get it by Nov 10-20 if you order today


Buy it now |  ...0961

Add to cart









 Add to collection

Item details 

 Handmade

 Ships from California! Shorter shipping distances are kinder to the planet

CCM Cream (3 units).



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CCM Cream (3 units).

CCM Cream is a night cream.

Learn more about this item

Other reviews from this shop | ★★★★★ (42)

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**\$39.99**

CCM Cream (3 Units) FREE SHIPPING

Apsarabazaars ★★★★★

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Buy it now | VISA ...0961

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Item details ^

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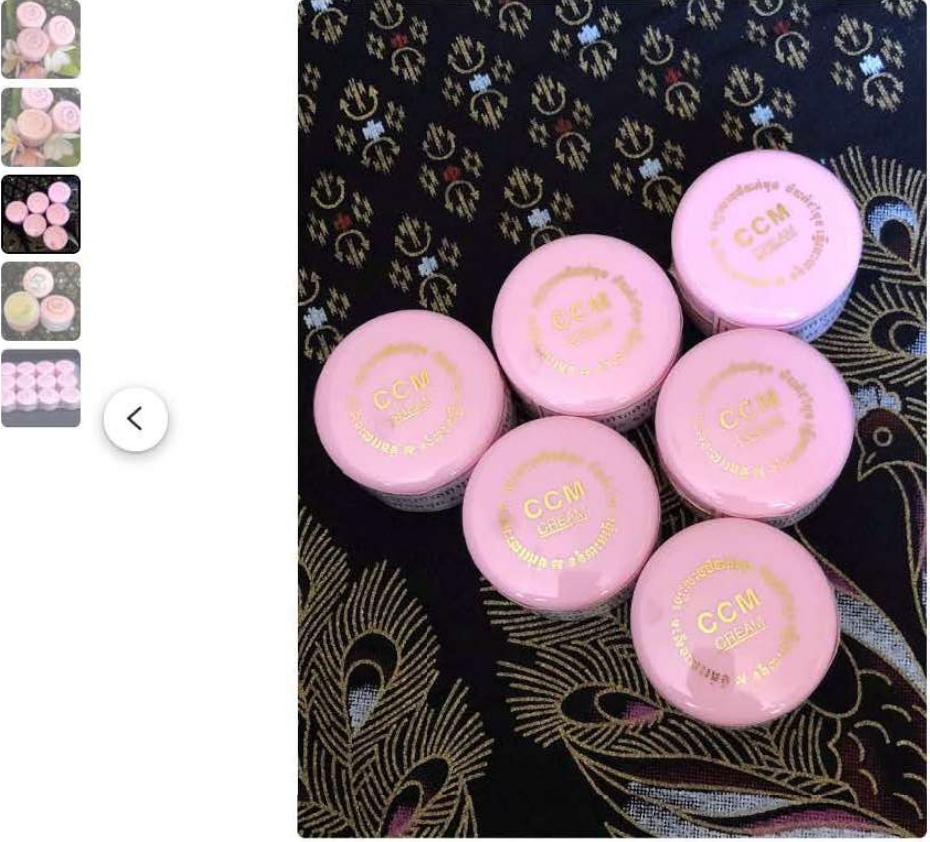
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**Other reviews from this shop** | ★★★★★ (42) Sort by: Suggested ▼

★★★★★  
Very good business service . Thank you .  
Purchased item: [BeBe Special Cream \(12 Units\) FREE SHIPPING](#)  
 [Delia Corpuz](#) · Oct 27, 2023

★★★★★  
One item was cracked. Maybe the shipping?  
 [Response from Chanthea Nay](#)  
sorry for the broken item, we will give you 1 extra for your next order please remind us thanks  
Purchased item: [BeBe Special Cream \(12 Units\) FREE SHIP...](#)  
 [Gina Gomez](#) · Oct 27, 2023

★★★★★  
great ! my wife love this product  
Purchased item: [BeBe Special Cream \(3 Units\) FREE SHIPPI...](#)  
 [Sign in with Apple user](#) · Oct 27, 2023

★★★★★  
Good product so I want more  
Purchased item: [CCM Cream \(3 Units\) FREE SHIPPING](#)

Item quality 5.0  
Shipping 5.0  
Customer service 5.0

Item quality 5.0  
Shipping 5.0  
Customer service 5.0

Item quality 4.0  
Shipping 4.0

CCM Cream is a night cream.  
Helps diminish visibly dark spots, acne marks, and whiten complexion.  
Helps your skin soft smooth clear and make you look younger.

Directions: Clean face well before application. Smooth a thin layer onto dampen face and massage gently in circular motion for a better penetration. Discontinue use if there's indication of skin irritation.

NOTED: The color of the creams could be slightly different from the actual products due to the lightings when the pictures were taken! !!!!

\*\*\*FIRST TIMER(S): If this is your first time ordering from us, we highly recommend ordering ONE UNIT TO TRY FIRST. We DO NOT accept return unless it is a direct result of our error(s).\*\*\*

Less

**Shipping and return policies**

Order today to get by Nov 10-20


Free shipping

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etsy.com/listing/1579127176/ccm-cream-3-units-free-shipping?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga\_searc...

Purchased item: [CCM Cream \(3 Units\) FREE SHIPPING](#)

 Nir Oct 24, 2023

Shipping 4.0


Customer service 4.0

Free shipping


Deliver to United States, 94703 ▾

Ships from United States

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Meet your sellers


 **Chanthea Nay**  
Owner of [Apsarabazaars](#)  
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Message Chanthea

This seller usually responds within 24 hours.

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**\$39.99**  
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CCM 365 Cream (3 Units) FREE ...  
Apsarabazaars

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FREE shipping



BeBe Special Cream (12 Units) F...  
Apsarabazaars

**\$119.99**  
FREE shipping



BeBe Special Cream (6 Units) F...  
Apsarabazaars

**\$69.99**  
FREE shipping



BeBe Special Cream (1 Unit) FR...  
Apsarabazaars

**\$17.99**  
FREE shipping



CCM Cream (12 Units) FREE SHI...  
Apsarabazaars

**\$119.99**  
FREE shipping

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Nurin Care (1 Crema) 100% Orig...  
TruVaShopTreasures

**\$30.00**



CaroLight Lightening Beauty Cr...  
Kitokoshop1

**\$51.46**



2in1 Brightening dark spots sca...  
Hayveen

**\$11.58**



Epidermis cream  
Magicepidermcreme

**\$14.51**



rightening Dark/Black spots Sc...  
Perfectobeaucouk

**\$11.57**



2x Brightening Dark/Black spot...  
QueenikWealth

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https://www.etsy.com/listing/1545682072/epidermis-cream?click\_key=eba12...

\$30.00



CCM Cream (12 Units) FREE SHI...  
Ad by Etsy seller

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FREE shipping

\$51.46



3 Piece Triple Strength Amplifie...  
Ad by Etsy seller

**\$180.00**~~\$240.00~~ (25% cff)

FREE shipping

\$11.58



Royal Jelly, Resveratrol Face Cr...  
Ad by Etsy seller

**\$15.00**

\$14.51



Hidradenitis Suppurativa Crea...  
Ad by Etsy seller

**\$25.50**~~\$30.00~~ (15% off)

\$11.57



Cracked Heels Balm for Dry Fee...  
Ad by Etsy seller

**\$17.99**

\$29.58



Handmade Lotion Bars - FREE S...  
Ad by Etsy seller

**\$12.00**

FREE shipping

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


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## **EXHIBIT Y**


Exhibits - Clio - Google Drive | Face fresh cream - Etsy | Beauty Cream Face Fresh From F | +

etsy.com/listing/1603462781/beauty-cream-face-fresh-from-pakistan?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga...

Etsy Categories Search for anything

Homepage > Bath & Beauty > Skin Care > Moisturizers

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5 views in the last 24 hours

**\$30.55+** ~~\$32.16+~~

5% off sale for a limited time

Beauty Cream ( Face Fresh ) from Pakistan made

iMinoosh ★★★★★

✓ Returns & exchanges accepted

QUANTITY ★

Select an option

Buy it now | VISA ...0961

Add to cart

♥ Add to collection

Item details ^

Handmade

69° Search

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etsy.com/listing/1603462781/beauty-cream-face-fresh-from-pakistan?ga\_order=most\_relevant&ga\_search\_type=all&ga\_view\_type=gallery&ga...

Handmade

Beauty Cream ( Face Fresh ) from Pakistan made  
NOTE : Please drop your contact number in message for delivery purpose after placing order

Shipping and return policies

Order today to get by Dec 1-26

Returns & exchanges accepted within 7 days

Free shipping

Deliver to United States, 94703

Ships from Pakistan


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iMinoosh  
Owner of iMinoosh

Other reviews from this shop | ★★★★★ (3) Sort by: Suggested ▼

★★★★★  
This product is excellent I would like to recommend  
Purchased item: [1 x \(Chandni \) Pakistan made](#)  
 Lh Oct 29, 2023

★★★★★  
Looks good. Fits perfectly. Fast delivery.  
See in original language  
Purchased item: [Kawasaki Motorcycle Riding Boots Genui...](#)  
  
 Aart Bosch Nov 2, 2023

★★★★★  
Highly recommended, beautiful and well finished, no mess, recommended to everyone, thanks etsy  
See in original language  
Purchased item: [Kawasaki Ninja Motorbike Motorcycle Mot...](#)  


Item quality 5.0  
Shipping 5.0  
Customer service 5.0

Item quality 4.0  
Shipping 4.0

Item quality 5.0  
Shipping 5.0  
Customer service 5.0

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This seller usually responds within a few hours.

gerwin Oct 25, 2023


Photos from reviews




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ULC PRO 23/24 Group Stage Basketball  
IMinoosh  
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\$90.04 (5% off)  
FREE shipping




Beauty cream (Goree) from Pakistan  
IMinoosh  
**\$30.55**  
\$32.16 (5% off)  
FREE shipping



Cream (Goree) Day and Night  
IMinoosh  
**\$30.55**  
\$32.16 (5% off)  
FREE shipping



Beauty Cream (24k Parley Gold)  
IMinoosh  
**\$30.55**  
\$32.16 (5% off)  
FREE shipping



Kawasaki Ninja Motorbike Motorcycle Gloves  
IMinoosh  
**\$109.98**  
\$115.77 (5% off)  
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91 items
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110+ items

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Custom Extra Strong Amplified ...  
Ad by Etsy seller

**\$30.00**  
~~\$40.00~~ (25% off)



Organic | Rosacea Face Cream | ...  
Ad by Etsy seller

**\$25.00**



MaryGold Face Cream  
Ad by Etsy seller

**\$62.00**  
FREE shipping



TINA TONER Face cream  
Ad by Etsy seller

**\$45.00**  
~~\$60.00~~ (25% off)  
FREE shipping



The Glow Fade Cream; Even Ski...  
Ad by Etsy seller

**\$15.00**



Rose face cream  
Ad by Etsy seller

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DARKSPOTS | **DULNESS**

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## **EXHIBIT Z**

No. A158275

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

---

**LARRY LEE,**

APPELLANT/PLAINTIFF,

v.

**AMAZON.COM, INC.**

RESPONDENT/DEFENDANTS,

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Appeal from the Superior Court for the County of Alameda  
Honorable Robert McGuiness  
Case No. RG14738130

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**BRIEF OF AMICUS CURIAE ATTORNEY GENERAL  
RON BONTA  
IN SUPPORT OF APPELLANT LARRY LEE**

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## STATEMENT OF INTEREST

Attorney General Rob Bonta submits this brief pursuant to California Rules of Court, Rule 8.200, subdivision (c)(7), in the exercise of the Attorney General's independent constitutional, statutory, and common law powers to represent the public interest. The Attorney General is the State's chief law officer. See Cal. Const., art. V, § 13; *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 353. He is also the public official with statewide authority to enforce the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 et seq. (Proposition 65). He is the only public official with authority to review and comment on settlements entered into by private enforcers under Proposition 65. Health & Saf. Code, § 25249.7. The Attorney General thus has a special interest in the proper interpretation and enforcement of this statute.

This Proposition 65 enforcement action involves mercury in skin-whitening products. Mercury is a highly toxic substance and the levels in the products at issue here were so high as to pose dangers of mercury poisoning. The Attorney General submits this brief as amicus curiae in support of Appellant to assist the Court in its analysis on two issues:

- (1) With respect to the requirements imposed by Proposition 65:
  - (a) the standards that apply when a judge is deciding whether a plaintiff has adequately shown that a particular product contains a listed toxicant when the toxicant is the very mechanism by which the product achieves its advertised purpose; (b) the extent to which a plaintiff must prove individual consumers' exposure to a toxin-containing product (here, a skin cream) when bodily exposure is inherent in the normal, intended use of the product; and (c) the extent to which a provider of such products can escape liability by pleading ignorance about a product's composition when the product has been identified to the provider by official, published health alerts; and
- (2) Whether the federal Communications Decency Act, 47 U.S.C. §230, preempts a plaintiff's Proposition 65 claims against online sellers of contaminated products.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Proposition 65 was passed by a large majority of the voters in 1986, because they wanted to be protected from, or alternatively warned about, hazardous substances. The law has been instrumental in removing these hazardous substances—especially heavy metals like lead and mercury—from foods and consumer products. The standards adopted by the trial court, and advanced by Amazon on this appeal, would apply to the Attorney General, and other public prosecutors, and would significantly undermine their efforts to enforce the law and to protect public health. Proposition 65 has been an effective tool in promoting the safety of many imported products that are not subject to effective health and safety regulations and that, accordingly, pose health risks that California consumers know nothing about. These risks are especially pronounced when an online seller, like Amazon, can arrange to have these dangerous, unregulated, products shipped to California homes without any warning to consumers. In this context, the decision below could eviscerate the ability of the Attorney General, District Attorneys, and private enforcers to continue their effective work in protecting Californians from these dangerous products.

Specifically, the trial court’s ruling, and the arguments that Amazon raises here, lack merit, and have the potential to severely weaken Proposition 65 enforcement, for the following reasons:

First, the trial court’s ruling that a Proposition 65 enforcer is required to test multiple samples from each lot—even when the ingredient (here, mercury) is the intended, active agent that has been deliberately added to make the product perform its advertised function—lacks any merit. This ruling is unsupported by precedent, and it would have severe implications for health agencies like the California Department of Public Health (CDPH) and the European Union’s Rapid Alert System for dangerous non-food products (RAPEX), entities that issue—as they did in

this case—product-wide alerts based on test results for only a few units. The trial court’s ruling is especially troubling here, where the private enforcer had no access to the foreign sellers of these products, and Amazon, which did have access to sellers or distributors of these products, did not provide a single test result showing that any of the products did not contain the active ingredient, mercury.

Second, and of equal concern, is the trial court’s ruling that irresponsible manufacturing practices can be used as a defense to a Proposition 65 enforcement action, and that Amazon could avoid liability because the suppliers here had no standard “Good Manufacturing Practices” (GMPs) in place to ensure the consistency of the mercury in the skin creams. This argument is irrelevant here, because mercury was intentionally added to the creams, and the sampling done by the private plaintiff (Larry Lee), CDPH and RAPEX shows that the chemical was present at thousands of times the legal limit. This ruling would undermine the work the Attorney General has done under Proposition 65 to require companies to use Good Manufacturing Practices to address heavy metals in consumer products, and it would encourage businesses to ignore these crucial safety practices because doing so would provide them with an effective defense to liability under Proposition 65.

Third, the Court’s next ruling—that the sale of a product for its intended use is not sufficient to prove exposure—is novel, defies common sense, and is contrary to common practice in Proposition 65 cases where the parties and the courts routinely use the sale of the product as the proxy for the exposure, if the intended use of the product will cause the exposure. To require the plaintiff to present evidence of actual use of the contaminated product would significantly undermine the statute, enabling violators to pay minimal penalties when they intentionally sell millions of units of a dangerous product.



Fourth, the court’s ruling that Proposition 65 is preempted by the Communications Decency Act lacks merit, because what Amazon was required to do here—provide a warning or stop selling a dangerous product once it learned of the danger—does not involve any of the factors that would lead to preemption. Amazon was not required to review, or take responsibility for, third-party content, and it was not made liable for the statements of others. This preemption ruling would undercut the protections sought by voters when they enacted Proposition 65, and permit Amazon to operate an open portal into the American marketplace, selling dangerous and adulterated products manufactured by foreign companies, like the mercury creams at issue here, with impunity.

Fifth, while Amazon disparages Mr. Lee as a “bounty hunter” (Respondent’s Br. 54), it overlooks the voters’ purpose in enacting Proposition 65. Specifically, the voters expressed frustration with State agencies’ work in protecting them from hazardous substances, and they therefore wanted to enable private enforcers to secure “strict enforcement of the laws controlling hazardous chemicals.” *AFL-CIO v. Deukmejian* (1989) 212 Cal. App. 3d 425, 430-431, quoting Preamble, Proposition 65, Section 1. That is just what Mr. Lee did here. He identified a health threat of statewide (in this case international) concern: the sale of skin-whitening creams adulterated with dangerous levels of mercury.<sup>1</sup> Notwithstanding the fact that state and international agencies had issued health alerts urging people not to use these products because they can cause mercury poisoning,

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<sup>1</sup> A host of health and environmental groups, including Sierra Club, Center for Environmental Health, Campaign for Safe Cosmetics, the Beautywell Project, and Black Women for Wellness shares these concerns. See, [https://www.sierraclub.org/sites/www.sierraclub.org/files/program/documents/Amazon\\_Letter\\_15\\_November2018\\_Final\\_US-51.pdf](https://www.sierraclub.org/sites/www.sierraclub.org/files/program/documents/Amazon_Letter_15_November2018_Final_US-51.pdf) (as of 6/5/2021).

the products were still available on Amazon’s website for any California consumer to purchase, without any warning to consumers that the Products would expose them to toxic levels of mercury. Mr. Lee researched the products and the alerts; he located the products for sale on the Amazon website; he tested the Products to confirm they had very high mercury levels; and he served sixty-day notices and sued Amazon. His actions were consistent with the voters’ intent and the statutory requirements, and were necessary to achieve the goal that had eluded the governmental regulators: to stop Amazon’s sales of the hazardous products to California consumers who had no warning that the products would expose them to mercury, and who, if they received such a warning, would not buy the products.<sup>2</sup>

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<sup>2</sup> Amazon notes that Mr. Lee sought high penalties (25% of which would have been payable to him, and the remaining 75% payable to the Office of Environmental Health Hazard Assessment (OEHHA) (Health & Saf. Code section 25249.12(c)-(d))) based on testing of only a few products. (Respondent’s Br. 14-15, 34.) Penalties were not addressed by the trial court; they are not before this Court, and in this brief, the Attorney General does not address this issue, except to note that Proposition 65 sets out the factors that the Court should consider in setting a penalty, including the nature and number of the violations, whether the violator took good faith measures to comply, the willfulness of the misconduct, and “any other factor that justice may require.” (Health & Saf. Code, section 25249.7, subd. (b).)

In this case, the proposed penalty was significantly higher than any that the Attorney General is aware of. Further, cases warranting the highest penalties usually involve companies who are responsible for the presence of the harmful chemical in the product, either by direct placement as an ingredient (for example by using lead as a component on soda bottles or in artificial turf) or by inadequate supervision of their ingredients (for example by allowing lead contamination in candies and cookies). Neither factor is present here, where Amazon violated Proposition 65 by selling products that had been adulterated with mercury by others. If this matter is remanded to the trial court, Amazon will have an opportunity to present evidence and argue that a lesser penalty—or no penalty—is warranted.

Finally, in considering the effect of the trial court's ruling, it is important to note that the Attorney General, sometimes working with District Attorneys, the Los Angeles City Attorney, and private enforcers, has filed and settled Proposition 65 cases that have been successful in removing high levels of hazardous substances, such as lead, from a wide range of products, including, for example, Mexican style candy; Mexican Coke, Pepsi and Dr. Pepper/7Up soda bottles; Nabisco Ginger Snaps; and artificial turf, including AstroTurf. The resulting Consent Judgments require the settling companies to implement carefully designed measures, usually including Good Manufacturing Practices, to minimize the levels of lead and other dangerous chemicals in their products.<sup>3</sup>

The trial court's ruling in this case will undermine the public health benefits of enforcement of Proposition 65, not only by private enforcers, but by public enforcers as well. It will enable sellers like Amazon to continue to operate as a conduit for adulterated foreign products to be sold

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[https://oag.ca.gov/sites/all/files/agweb/pdfs/prop65/People\\_v\\_Alpro\\_Alimentos\\_Proteinicos.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/prop65/People_v_Alpro_Alimentos_Proteinicos.pdf) (Mexican style candy Consent Judgment) at pp 5-6, 7-10; <https://oag.ca.gov/system/files/media/prop65-people-coke-042908.pdf> (Mexican Coca-Cola Consent Judgment), at pp. 4, 6-14 ; <https://oag.ca.gov/system/files/media/prop65-people-pepsi-071806.pdf> (Mexican Pepsi Consent Judgment), at pp. 5-6, 8-19; <https://oag.ca.gov/system/files/media/prop65-people-dp7up-032307.pdf> (Mexican Dr. Pepper/Seven Up Consent Judgment) at pp. 6, 8-18; [https://oag.ca.gov/sites/all/files/agweb/pdfs/prop65/people\\_v\\_mondelez.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/prop65/people_v_mondelez.pdf) (Nabisco Ginger Snaps Consent Judgment) at pp. 4-5, 6-7; <https://oag.ca.gov/system/files/media/AstroTurf%20Signed,%20Entered.pdf> (AstroTurf Consent Judgment) at p.3, (all as of 6/6/2021). For a list of other major settlements, in products ranging from vitamins to anti-diarrheal medicines, to children's toys see <https://oag.ca.gov/prop65/litigation>. See also, Rechtschaffen and Williams, *The Continued Success of Proposition 65 in Reducing Toxic Exposures* 35 ELR 10830 (2005)



to consumers in California. It will frustrate the intent of the voters, who wanted to avoid exposure to dangerous chemicals or, alternatively, be warned about potentially harmful products so that they could protect themselves from exposures.

## ARGUMENT

### **I. THE TRIAL COURT DID NOT PROPERLY APPLY THE LEGAL STANDARD FOR PROPOSITION 65.**

#### **A. Mr. Lee’s Test Data Demonstrated that the Products at Issue Contained Mercury as an Intended Ingredient.**

The trial court placed an inappropriate legal burden on Mr. Lee—and by implication on any other Proposition 65 enforcer, including the Attorney General—by requiring him to go beyond establishing the *prima facie* elements of his case (here, that the Products contained elevated levels of mercury and that a test from each of these Products showed very high levels of mercury). Instead, under this ruling the enforcer would need to prove, through multiple tests from multiple lots, that *each unit* of these Products contained this intended ingredient.<sup>4</sup> Statement of Decision, pp 7-8, AA935-936. This ruling is of serious concern to the Attorney General and runs contrary to both common sense and the purpose of Proposition 65 to protect Californians from dangerous chemicals.

#### **1. There was compelling evidence that the Products contained mercury.**

In this case, there are three compelling factors that establish that Mr. Lee satisfied his burden of proof.

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<sup>4</sup> For the purposes of this brief the “Products” are Face Fresh, Faiza and Monsepa.

First, Mr. Lee provided evidence that the Products contained mercury. In addition to his own testing, this included the following test results from RAPEX<sup>5</sup> and the California Department of Public Health:

	Mercury concentration in milligrams per kilogram (parts per million (ppm))		
	Fazia	Face Fresh	Monsepa
Mr. Lee's Testing <sup>6</sup>	9,600	5,600	15,000
CDPH/State Testing <sup>7</sup>			8,900
			12,000
			13,000
RAPEX Testing <sup>8</sup>	5,430	4,620	
	5,940		

All these results were thousands of times above the maximum level allowed by federal law, which is 1 part per million. 21 C.F.R. §700.13(d)(2).<sup>9</sup>

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<sup>5</sup> RAPEX is the European Union's system that informs member states and companies about safety issues in non-food products. 4 RT 1349:22-1351:22.

<sup>6</sup> Lee's test results are found at AA481 (Faiza), AA491 (Face Fresh), and AA504 (Monsepa).

<sup>7</sup> The California Department of Public Health's test results are found at AA454 and 644, and a third result on which it relied is found at AA653 (Monsepa).

<sup>8</sup> RAPEX issued two alerts based on the test results for Faiza. The first, indicating a mercury concentration of 5,430 mg/kg (ppm) is found at AA599; see also AA601-02, and Motion for Judicial Notice, Ex. E. The second indicating a mercury concentration of 5,940 mg/kg (ppm) is found at AA629, see also AA610-611 and Motion for Judicial Notice, Ex. G. RAPEX also issued an alert for Face Fresh, showing a mercury concentration of 4,620 mg/kg (ppm) found at AA597, see also AA567-568, 623 and Motion for Judicial Notice, Ex. D.

<sup>9</sup> This is not a case where the mercury levels hovered near that legal limit. Amazon is therefore wrong when it asserts that: "Here, the products purportedly containing mercury are not themselves the issue—that is, the products themselves are not prohibited or illegal, only if they are (continued...)"

Second, mercury was the intended ingredient. The levels of mercury found in these Products were not trace contaminants that might have accidentally made their way into some lots but not into others. Instead, mercury was intentionally added to the Products as an active, skin-whitening agent, which the manufacturer would have included in every lot, as demonstrated by the following evidence presented to the court:

- Mercury is the active ingredient that in fact achieves the product's goal: lightening skin. 5 RT 1676:9-1676:11;
- Lee's experts carefully explained that that mercury was the deliberately added, active ingredient. 4 RT 1315:17-1316:10, 1330:23-1331:10, 1332:22-1333:6;

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(...continued)

adulterated.” (Respondent’s Br. 51.) In fact, under federal law, “any cosmetic containing mercury” (unless it is intended for use only around the eye) is considered to be “adulterated” if it contains one part per million or more of mercury. 21 C.F.R. §700.13(d)(2). An adulterated cosmetic is prohibited under federal law. 21 U.S.C. §331(a)-(c). Cosmetics, other than eye cosmetics, which contain more than 1 ppm mercury are also considered “adulterated” and are prohibited under California Law. Health and Safety Code sections 111670 and 111700. Mercury is listed as a developmental toxin under Proposition 65 (27 Cal Code Regs § 27001(c)) and regular exposure can cause mercury poisoning. AA412. RAPEX, therefore determined that the Faiza product “poses a chemical risk because it contains a mercury compound (5,940 mg/kg) as a skin-lightening substance.” AA629. Motion for Judicial Notice, Ex. G. It issued a similar warning for Face Fresh. AA597. Motion for Judicial Notice, Ex. D. The California Department of Public Health warned people not to use the Monsepa product because it “tested positive for high levels of mercury. Mercury is a toxic chemical, and regular or prolonged exposure can result in mercury poisoning.” AA412.



- Amazon's expert conceded that mercury was an ingredient, not a contaminant. 6 RT 2070:10-2071:6, 2076:4-9; and
- RAPEX reached the same conclusion, that mercury was an ingredient, not a contaminant. It noted: "This product poses a chemical risk because it contains a mercury compound (4,620 mg/kg) *as a skin-lightening substance*." AA597, Motion for Judicial Notice, Ex. D. (Emphasis added).

Third, the products for which RAPEX and CDPH issued health alerts are the same ones that Amazon sold. AA415, AA629 (Poona Brothers Faiza Beauty Cream); AA456, AA596-597 (Face Fresh Beauty Cream); AA439-443, AA411-413 (Monsepa Express Peeling).

Mr. Lee therefore presented clear evidence that (1) the Products he tested contained high levels of mercury; (2) mercury was the intended ingredient in these Products; and (3) these Products were the same ones for which RAPEX or CDPH had issued their product-wide alerts. The only proper inference that can be drawn from these facts is that all the units of the product contain significant amounts of mercury, even if the actual levels vary somewhat. Mr. Lee therefore carried his burden of showing that the Products—including the units that Amazon sold—contained mercury.

In fact, when the CDPH or RAPEX issued their advisories against the Products, they showed results for only a small number of units of those creams. The alerts, however, were product-wide. AA599, 629, Motion for Judicial Notice Exs. E, G (Faiza); AA597 Motion for Judicial Notice Ex. D (Face Fresh); AA411-413 (Monsepa). While no one would seriously argue that CDPH could recall only units of product that it tested, this is what would result from the argument Amazon makes here. Further, while there may be reason to make a health advisory lot- or batch-specific, if evidence indicates that a particular lot was accidentally contaminated, there is no reason for a health advisory to be limited to a particular lot of a product

when the regulatory agency has found, as RAPEX did here, that a manufacturer is using a listed chemical as an intended active ingredient in a product. In those situations, regulatory agencies routinely conclude, as CDPH and RAPEX did here, that the product will contain the chemical and that a product-wide alert is appropriate.

Faced with all this evidence, Amazon could have provided specific evidence of its own to indicate that mercury was not present in every unit of the Products. It did not do so. While Amazon criticizes Mr. Lee for providing too few tests, this is not part of an enforcing party's prima facie case, which Mr. Lee established here, where his testing showed that the Products contained high levels of mercury.

Along the same lines, Amazon claims that "*Lee presented no evidence regarding the manufacturing and distribution processes used for any of the products at issue.*" (Respondent's Br. 22) (emphasis in original). Again, this is not part of an enforcing party's prima facie case. It would be especially inappropriate to place this burden on Mr. Lee in this case, where he had no means of contacting the manufacturers or sellers of these Products to inquire into their "manufacturing and distribution practices." Evidence showed that the Products were likely to have been manufactured in Pakistan (4 RT 1429:18-24, 1313:2-1314:2, AA597, AA599, AA629, Motion for Judicial Notice Exs. D, E, G), and possibly supplied from Hong Kong. 3 RT 911:9-25, 3 RT 912:1-9. Amazon made these sales possible in California; it knew who the foreign sellers or distributors were; it could have contacted these parties directly; and it had leverage to obtain needed information. (Opening Br. 32-33.) Given these facts, Amazon's criticism of Mr. Lee for providing only limited product information and a few test results rings hollow. Mr. Lee met his prima facie case and Amazon provided nothing in response.

Amazon also argues that the existence of the RAPEX tests and advisories should only apply to European sales, and do not demonstrate that the California products contained mercury, because some companies use different ingredients for different countries. Its expert, for example, “highlighted the example of Coca Cola, which uses different ingredients for the ‘same’ products sold in different countries.” (Respondent’s Br. 30.) While some companies may indeed use different ingredients in different countries, Amazon presented no evidence that this happened here, particularly where the ingredient at issue is the active ingredient that makes the product effective for its intended purpose. In fact, the only evidence in the record shows that every single unit of the Products, regardless of where manufactured or where sold, contained the identical active ingredient—mercury. Mr. Lee purchased the Products in California, and they contained high levels of mercury. CDPH separately purchased the Monsepa product in California, and it contained high levels of mercury. RAPEX based its alerts on Faiza and Face Fresh products from the United Kingdom, and they had similarly high levels of mercury.<sup>10</sup> The evidence shows all the Products contained high levels of mercury, irrespective of the source of these Products.

Amazon’s remaining argument regarding the presence of mercury distorts the evidence of Mr. Lee’s expert witness. Amazon notes that the manufacturers of the Products did not use current GMPs, and it quotes testimony from Mr. Lee’s expert, Mr. Steinberg, that, because of the absence of these vital quality controls, “*all bets are off*” as to the “consistency [of mercury] across units and batches.” (Respondent’s Br. 23,

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<sup>10</sup> See, the Table at page 12, above. The RAPEX alerts indicate that the Faiza and Face Fresh products were from the United Kingdom. AA599, 629, 597, Motion for Judicial Notice Exhs. D, E, G.



emphasis added.) Amazon thus concedes that there were *no safeguards* to limit the concentrations of mercury in the Products, and there was nothing to prevent these mercury levels from reaching concentrations high enough to cause devastating results, especially to pregnant women.<sup>11</sup> Amazon uses this cavalier handling of a toxic substance as a defense. The Attorney General respectfully asks the court to reject this argument for the following reasons.

First, Amazon distorts Mr. Steinberg's testimony. Mr. Steinberg was speaking about the *consistency* of the mercury concentrations across batches. (4 RT 1412:24–1418:23, 1429:18–1430:3.) While the levels in the batches tested did vary, by several thousand parts per million, they all contained dangerously high levels of mercury. And those levels were not slightly above the dangerous level. Instead, the tested sample with the lowest mercury concentration was still approximately 4,600 times the level that the law sets as too dangerous for human use. See Table at page 12, *supra*. Further, Mr. Steinberg did *not* testify that the active, intended ingredient of these Products—mercury—was likely to be absent from any of those batches because of the lack of GMPs. And, again, Amazon provided

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<sup>11</sup> See, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR) Mercury Exposure Among Household Users and Nonusers of Skin-Lightening Creams Produced in Mexico — California and Virginia, 2010, available at <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6102a3.htm> ; Centers for Disease Control and Prevention, MMWR, Notes from the Field: Methylmercury Toxicity from a Skin Lightening Cream Obtained from Mexico — California, 2019, available at <https://www.cdc.gov/mmwr/volumes/68/wr/mm6850a4.htm> ; March of Dimes, Mercury and Pregnancy, available at <https://www.marchofdimes.org/pregnancy/mercury.aspx> ;(all as of 06/05/2021)

no test results showing that the mercury in the Products ever ranged lower than 1 ppm.

Second, the lack of GMPs and quality controls should not be used—as the trial court did and as Amazon urges this Court to do—to make it easier to sell dangerous and illegal products by requiring the plaintiff to test multiple units in every single lot of the product, in order to prove that the units all contain the chemical.<sup>12</sup> As noted above (page 10, footnote 3), the Attorney General’s Proposition 65 settlements routinely require companies to implement GMPs, under the supervision of a qualified product quality auditor, to ensure that the contaminants in their products are kept to the lowest level feasible. The trial court ruling now turns this safety requirement on its head: suppliers’ lack of quality control can be used *as a defense*, and a company that takes a reckless approach to exposing its consumers to toxins, like mercury, is entitled to hold the plaintiffs to a higher standard of proof. This defense, if accepted, would encourage unscrupulous businesses to avoid GMPs so that they can argue that there is no evidence that their products contain dangerous substances. This ultimately would undermine the work the Attorney General has done over the past decades to require companies to use GMPs and GMP audits to

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<sup>12</sup> Indeed, the trial court’s reference to Good Manufacturing Practices makes no sense for another reason. Good manufacturing practice is intended to ensure that products do not contain banned chemicals. See the U.S. FDA’s Good Manufacturing Practice (GMP) Guidelines/Inspection Checklist for Cosmetics, available at: <https://www.fda.gov/cosmetics/cosmetics-guidance-documents/good-manufacturing-practice-gmp-guidelinesinspection-checklist-cosmetics> (as of 06/05/2021).

successfully reduce heavy metal contamination, and resulting exposures, in a wide variety of products.

**B. The Sale of a Product for its Intended use is Sufficient to Demonstrate Exposure if that Intended Use Inherently Involves Exposure.**

The trial court also erred when it accepted Amazon’s argument that Mr. Lee had to prove that purchasers of the Products opened the tubes and applied the creams to their skin. The showing, which Amazon demanded, is novel, has never been part of a Proposition 65 plaintiff’s case, and, if required, will affect the Attorney General’s and other enforcers’ ability to enforce Proposition 65, and ultimately endanger Californians.

The evidence Amazon now demands is, as Mr. Lee notes, contrary to a basic rule of construction enacted by the legislature in 1963: “Things happen according to the ordinary course of nature and the ordinary habits of life.” Cal. Civil Code §3546. Consistent with this rule, the Attorney General has always assumed that people who buy cookies eat them; people who buy sodas drink them; and people who buy skin creams apply them to their skin. Further, companies do not sell products that their customers will not use, and consumers do not buy skin creams unless they intend to apply them to their skin. Accordingly, in his cases, the Attorney General has not provided declarations from consumers that they ate the lead-containing cookies, took the vitamins, or used the anti-diarrheal medicine that have been the subject of his Proposition 65 claims. Nor has any court ever even suggested that such evidence was necessary.

The Office of Environmental Health Hazard Assessment (OEHHA)—the lead agency that implements Proposition 65—has repeatedly emphasized this common-sense interpretation of the word “expose” in its formal Final Statements of Reasons (FSORs) supporting related Proposition 65 regulations. For example, in a FSOR for a regulation



involving consumer product exposures, OEHHA concluded that “expose” “could include the purchase by an individual of a product, not just the consumption of that product.” Revised Final Statement of Reasons, 22 California Code of Regulations Division 2, §12601 (Nov. 1, 1988), at p. 10, Exhibit B to Appellant’s Motion for Judicial Notice. Similarly, in the FSOR for a regulation defining certain terms in the law, OEHHA considered when exposures to agricultural chemicals occurred, and rejected the definition of “expose” that Amazon advances:

The term "expose" generally means "to lay open", as to something which is injurious or dangerous. Laying an individual open to a chemical hazard through a consumer product could result from any act which propels the product toward the individual.

Final Statement of Reasons, 22 California Code of Regulations Division 2, at p. 19, Lee’s Supplemental Motion for Judicial Notice, Exhibit H. A company that sells a product that includes directions to apply it to the skin is “[l]aying an individual open to a chemical hazard through a consumer product” and Amazon’s counter argument—that an enforcer must prove that users opened and used the dangerous product to establish liability—is contrary to Proposition 65 and its implementing regulations, and the lead agency’s clear and repeated interpretation of those regulations.<sup>13</sup>

Finally, Amazon relies on evidence from CDPH that there has been a public campaign to discourage the use of skin-whitening creams that may contain mercury, including a buy-back program for new and used products.

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<sup>13</sup> To argue for a narrow reading of the exposure requirement, Amazon relies on *Consumer Cause v. Weider Nutrition Int’l Inc.* (2001) 92 Cal.App.4<sup>th</sup> 363, 369–371, which held that an exposure did not occur when one chemical caused the metabolism of a different, listed chemical in the body. That case is irrelevant, because no comparable situation has occurred here, as mercury was present in the product itself, not metabolized through use.

Based on this, Amazon asserts that it is likely that not even one of the Products at issue was opened or used. (Respondent's Br. 33.) As Mr. Lee notes, there are several problems with this claim, including that there is no evidence that the campaign reached Amazon's buyers. (Reply Br. 25-26.) Moreover, if the campaign was efficient enough to reach each of the buyers who placed the 238 orders on Amazon's website (Respondent's Br. 14, 33), Amazon would likely have heard of it, and based on this widespread information, it should have ceased the sales of these Products.

### **C. Amazon Knew that the Products Contained Mercury.**

Another aspect of the trial court's ruling that presents significant concerns for the Attorney General relates to Amazon's knowledge. The trial court found that Amazon lacked "actual knowledge" that the Products contained mercury because mercury was not identified as an ingredient on any of the product pages or on the product labels. Statement of Decision, at p. 10. AA929, 938. In essence, the trial court created a partial exception to the warning requirement for chemicals that are deliberately omitted from the product label. This reasoning must be rejected for two reasons:

First, it misconstrues the meaning of actual knowledge, which can be obtained from any reliable source. Amazon specifically relies on the regulation that defines a retailer's actual knowledge under Proposition 65 (Respondent's Br. 26), which provides:

"Actual knowledge" means the retail seller receives information from *any reliable source that* allows it to identify the specific product or products that cause the consumer product exposure. Such knowledge must be received by the retail seller, its authorized agent or a person whose knowledge can be imputed to the retail seller.

27 Cal Code Regs. § 25600.2(f) (emphasis added). Here, Amazon had notice from RAPEX that the Faiza and Face Fresh products contained mercury, but it continued to sell these products until it received Mr. Lee's

sixty-day notice. AA768:13-21. Mr. Lee supplied photographs to show that the products that were the subject of the RAPEX notice were the same products that he bought and tested. AA415, AA629 (Faiza); AA456, AA597 (Face Fresh). Similarly, Amazon received information about the Monsepa product from Mr. Lee's sixty-day notice and continued to sell it even after receiving this notice. AA387, 439-443, AA412-413 (Reply Br., 33-34).<sup>14</sup>

Second, the trial court's view of notice would significantly interfere with Proposition 65's objectives as to dangerous *contaminants*—that is, things that are not intentionally added, and therefore not listed on the label, like lead in candy, cookies and vitamins. This would seriously undermine the effectiveness of Proposition 65 in compelling companies to adopt quality control procedures to detect, reduce, or eliminate contaminants that are carelessly, but not intentionally, added to their products.

#### **D. Internet Retailers are not Excluded from Proposition 65.**

Proposition 65 applies to a “person ...doing business” within the meaning of California Health & Safety Code section 25249.6. Amazon does not dispute that it is a person doing business in California. It argues, however, that its “limited involvement with the sales at issue should not be held to have created a duty to warn.” (Respondent's Br. 52.) Specifically, Amazon asserts that:

[Proposition 65] itself reveals an intent to impose the responsibility to warn on entities in the chain of distribution, with primary

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<sup>14</sup> The fact that Amazon did later cease sales or provide a warning for these products (Opening Br. 49) would be a factor for the trial court to consider in setting a penalty.

responsibility on “the producer or packager rather than on the retail seller.” (Health & Saf. Code § 25249.11(f).)

(Respondent’s Br. 53.) The section Amazon quotes (Respondent’s Br. 25-26, 52-53), however, also specifically states: “regulations implementing Section 25249.6 shall to *the extent practicable* place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller.” Section 25249.11(f), emphasis added. The applicable regulation, 27 Cal Code Regs. §25600.2, therefore provides that the retail seller *is* liable when it is not practicable to require the producer or packager to provide the warning. Thus, while Amazon cites section 25600.2 (Respondent’s Br. 26, 52), it omits the provision which states that retailers *are* responsible for providing the warning when the suppliers are foreign companies that cannot readily be sued in California. Specifically, under this regulation, the retailer must warn when:

**(5)** The retail seller has actual knowledge of the potential consumer product exposure requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the product who:

- (A)** Is a “person in the course of doing business” under Section 25249.11(b) of the Act, and
- (B)** Has designated an agent for service of process in California or has a place of business in California.

27 Cal. Code Regs. § 25600.2(e)(5). That is precisely the situation here: Amazon had actual knowledge of the potential exposure it was causing when it sold the Products in California; and there is no evidence that the foreign suppliers of the Products had designated a service agent in California. The rationale behind a retailer’s responsibility when someone earlier in the production chain cannot be reached is the same as the public policy supporting strict liability at common law—to ensure that the burden is borne, not by consumers who may be harmed, but by those participants in the production and marketing enterprise. See *Bolger v. Amazon.com*,



*LLC* (2020) 53 Cal.App.5<sup>th</sup> 431, 448, citing *Vandermark v. Ford Motor Co.* (1964) 61 Cal.2<sup>nd</sup> 256. Accordingly, the very regulatory provision that Amazon relies on serves to establish that Amazon is subject to Proposition 65 and should be held liable in this case.

Finally, Amazon argues that “only parties in the chain of distribution have a duty to warn under Proposition 65.” (Respondent’s Br. 51) (capitalization omitted). As an initial matter, Proposition 65 simply states that the defendant must be a “person . . . doing business.” Health & Saf. Code, section 25249.6. In any event, Amazon is within the “chain of distribution” for the Products at issue here. As the Court held in *Bolger, supra*, 53 Cal. App. 5<sup>th</sup> at 438, “Amazon is a direct link in the chain of distribution, acting as a powerful intermediary between the third-party seller and the consumer.” More recently, in *Loomis v. Amazon.com LLC* (2021) 63 Cal. App. 5<sup>th</sup> 466, 476, the court noted that:

Contrary to Amazon's assertion that it merely provided an online storefront for TurnUpUp and others to sell their wares, it is undisputed Amazon placed itself squarely between TurnUpUp, the seller, and Loomis, the buyer, in the transaction at issue. When Loomis wanted to buy a hoverboard for her son, she perused product listings on Amazon's website. Amazon took Loomis's order and processed her payment. It then transmitted the order to TurnUpUp, who packaged and shipped the product to Loomis.

*Id.* at 480. Based on this conduct, the court held “we are persuaded that Amazon's own business practices make it a direct link in the vertical chain of distribution under California's strict liability doctrine.” *Id.* Amazon did the same thing here that it did in *Loomis*. (Opening Br. 32-33, AA304:9-14, 415-18, 440-443, 445-50, 510-12, 514-15, 517-20.) Amazon is, therefore, for these same reasons, a party in the chain of distribution, and there is no question that it is subject to Proposition 65.

## II. THE CDA DOES NOT IMMUNIZE AMAZON FROM LIABILITY.

The purpose of the Communications Decency Act (CDA)(47 U.S.C. §230) was to protect internet service providers from slander and defamation claims in order to foster a free exchange of ideas and promote the continued development of the internet. See *Bolger v. Amazon, supra*, 53 Cal.App.5<sup>th</sup> at 463. The CDA therefore provides, in pertinent part, that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” *Id.* at 230(c)(1). As the following discussion will show, the CDA does not preempt Proposition 65.

### A. Proposition 65 Does not Require Amazon to Monitor Third Party Content.

Amazon’s key claim in invoking the CDA is that, to comply with Proposition 65, it was required to “monitor” and make changes to the product display pages posted by the suppliers of the Products. (Respondent’s Br. 41-50.) This, however, is false. Amazon could have complied with Proposition 65 here without ever looking at those pages. Amazon had control of the sales of the Products and once it learned—whether from RAPEX, Mr. Lee’s notices, or from any reliable source—that these Products contained mercury, it could have prevented those sales or could have provided its own warnings.

*HomeAway.com, Inc. v. City of Santa Monica* (9th Cir. 2019) 918 F.3d 676, 683 is instructive here. In that case, the Ninth Circuit upheld a Santa Monica ordinance that prohibited HomeAway.com, a home-booking website, from allowing homeowners to list properties that were not licensed and listed on the city’s registry. The Ninth Circuit held that the ordinance did not run afoul of the CDA because it required only that Homeaway.com

*prevent* the booking of certain properties. It did not obligate the company to monitor or remove any third-party content. *Id.* at 681-682.

In an attempt to distinguish *HomeAway*, Amazon relies on the court’s observation that the Santa Monica ordinance “does not require the Platforms to review the content provided by the hosts of listings on their websites.” *HomeAway* at 682. Amazon states that Proposition 65 does require such review or monitoring. (Respondent’s Br. 50-51.) Specifically, it claims:

Under Lee’s theory of liability, Amazon would be required to monitor the product detail pages for every product sold by a third party, test or obtain testing information for each product that might contain a listed chemical (a process rife with logistical, factual, and legal issues), analyze the testing data (same), and determine whether to add a warning that the seller opted not to provide. This concept is untenable and directly contrary to the objectives of the CDA, not to mention common sense. (Respondent’s Br. 44.)

This is false. In this case, Proposition 65 did not require Amazon to monitor its product listing pages or to investigate whether they were offering mercury-containing products without a warning. What Proposition 65 did require was for Amazon to act, *once it knew* that these creams had high levels of mercury. Once it learned that was the case (from RAPEX or from Mr. Lee’s sixty-day notice), it had the *option* of looking at the product pages in question to see if they contained a warning, but it was not required to do this. Amazon’s other options, once it learned of the mercury exposures, were to prevent the sale of Products, or to simply add a warning to the product page, without reviewing it to see if any warning was already present.

Finally, Amazon may argue that it had no duty to compare the products it saw in the RAPEX alerts with the products that are available for sale on its website—because that would constitute “monitoring.”

*HomeAway.com* concisely rejected a similar argument:

Nor could a duty to cross-reference bookings against Santa Monica's property registry give rise to CDA immunity. While keeping track of the city's registry is "monitoring" third-party content in the most basic sense, such conduct cannot be fairly classified as "publication" of third-party content.

*Id.* 682-683. Once Amazon learned from RAPEX that the Face Fresh and Faiza products had dangerous levels of mercury, it had the duty under Proposition 65 to cross-reference these products with those for sale on its website, and to cease sales or warn. As *HomeAway.com* held, this duty to cross-reference does not give rise to CDA immunity.<sup>15</sup>

Proposition 65 therefore survives CDA preemption for the same reason that the rental ordinance in *HomeAway.com* did. It did not require any review of the platforms' product pages, but it did require Amazon to prevent transactions that violate the law.<sup>16</sup>

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<sup>15</sup> While there were no RAPEX alerts for Monsepa, Mr. Lee shows that Amazon continued to sell the Monsepa product after receiving his sixty-day notice that informed Amazon that this product contained mercury *and* that it was for sale on Amazon's website. (Reply Br. 33-34.)

<sup>16</sup> Amazon is also mistaken when it argues "Proposition 65 is merely a warning statute. Liability is based *entirely* on the provision of information—namely, whether a warning was provided. . . ." (Respondent's Br. 46, emphasis in original.) This is not correct, because businesses may comply with Proposition *either* by warning or by eliminating the exposure. Health & Saf. Code, § 25249.6. Amazon admits as much when it claims that it is not liable because Mr. Lee did not prove that there was an exposure. (Respondent's Br. 32-36.)

One primary purpose of the law is to see that toxic products are reformulated to remove chemicals, like mercury, that cause reproductive harm. *AFL-CIO v. Deukmejian*, supra, 212 Cal.App.3d 425, 430-431. Section 25249.10(c) provides that no warnings are required when exposures fall below certain levels. Reformulating products to ensure that exposures do not exceed those levels is, and has been, the main requirement of the Attorney General's settlements in every case where such reformulation is possible.



**B. Other Recent Cases Make Clear that Proposition 65 is not Preempted by the CDA.**

Two recent cases underscore how the CDA fails to support Amazon’s claim to immunity. In *Doe v. Internet Brands, Inc.* (9th Cir. 2016) 824 F.3d 846, the defendant, Internet Brands, knew about a rape scheme two users conducted on its website. The plaintiff brought a claim against it for failure to warn about the scheme. *Id.* at 849. The court noted that such a warning would arise from publishing activities, but that this did “not mean the failure to warn claim seeks to hold Internet Brands liable as the ‘publisher or speaker’ of user content.” *Id.* at 853. Instead, the court held that barring the “failure to warn claim would stretch the CDA beyond its narrow language and its purpose.” *Id.*

Amazon seeks to distinguish *Internet Brands* based on certain factual differences, mainly that the alleged underlying conduct there was criminal, and it did not arise from a particular posting on Internet Brand’s website. In deciding that Internet Brands did have a duty to warn, however, the court made several holdings that are relevant here. First, the court reasoned that allowing the plaintiff’s failure to warn claim would not have the chilling effect on the internet that the CDA is meant to avoid:

But such a broad policy argument does not persuade us that the CDA should bar the failure to warn claim. We have already held that the CDA does not declare a general immunity from liability deriving from third-party content. [T]he Communications Decency Act was not meant to create a lawless no-man's-land on the Internet.

*Id.* at 852-853, citations and quotation marks omitted.

Next, the court noted that Internet Brands was not alleged to have learned of the predators' activity from any monitoring of postings on the website, nor was its failure to monitor postings at issue. *Id.* at 851. The same is true here, where Amazon is alleged to have learned of the

adulterated Products from the RAPEX alerts and from Mr. Lee's notice, and, as noted above, not from monitoring any postings.

Finally, the court found that: "The duty to warn allegedly imposed by California law would not require Internet Brands to remove any user content or otherwise affect how it publishes or monitors such content." (*Id.* at 851.) The same is true here. Proposition 65 did not require Amazon to alter any content; Amazon could have complied with Proposition 65 in the same way that Internet Brands would need to comply, by posting a warning or by blocking sales of the adulterated Products.

Amazon's reliance on *Gentry v. eBay, Inc.* (2002) 99 Cal.App.4<sup>th</sup> 816, is misplaced for similar reasons. In *Gentry*, a plaintiff sued eBay for failing to provide a warranty or certificate of authenticity for autographed collectibles that third-party sellers represented to be to be authentic, as required by Civil Code section 1739.7(b). The court ruled for eBay, concluding that holding the company responsible for providing a warranty when "it merely made the individual defendant's false product descriptions available to other users on its Web site. . . puts eBay in the shoes of the [third party sellers], making it responsible for their publications or statements." *Id.* at 832-33. The court found that imposing such a requirement on eBay was preempted by the CDA. *Id.* The situation here, however, is different, because Proposition 65 does not make Amazon liable for the statements of the suppliers of the Products; it requires Amazon independently to provide a warning or to cease sales of the Products.

The Court of Appeal in *Bolger, supra*, carefully explained the limits of the *Gentry* holding:

Bolger's claims are based on Amazon's role in the chain of production and distribution of an allegedly defective product. The fact that some content provided by Lenoge was posted on the Amazon website does not automatically immunize Amazon for its own choices and activities unrelated to that content. (See

*HomeAway.com, supra*, 918 F.3d at pp. 682–683.)

*Bolger, supra*, 53 Cal.App.5th at p. 465. The same is true here, where Mr. Lee’s claims are based on Amazon’s role in “the chain of production and distribution of a [] defective product” that contains dangerous levels of mercury. *Id.* Amazon’s liability in *Bolger* was based on products provided by Lenoge, who was the third-party seller. In the present case, Amazon’s liability is similarly based on products provided by third-party sellers. As the *Bolger* court held, the fact that this case arises from third-party products does not immunize Amazon from its own choices and activities. Amazon’s choice here, to continue to sell the Products without providing a warning, after it knew that they contained dangerously high levels of mercury, is therefore not immunized by the CDA.

**C. Congress did not Intend to Preempt Claims like the ones at Issue in this Case.**

Amazon cannot broaden the scope of the CDA beyond its purpose, to evade California’s police power. The CDA contains a savings clause that states, “[n]othing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section . . .” 47 U.S.C. §230(e)(3). This savings clause recognizes that California must be able to enact laws to ensure its citizens’ health and safety by requiring sellers like Amazon to stop selling, or to provide warnings for, dangerous products, and by permitting enforcement actions, like the one Mr. Lee filed in the public interest in this case, when a seller knowingly fails to do so.

As the court observed in *Bolger*, “Amazon was ‘involved in the vertical distribution of consumer goods’ and ‘responsible for passing the product down the line to the consumer.’” *Bolger, supra*, at 453, citations omitted. Just as the court in *Bolger* found that Amazon could be held strictly liable and cannot be immunized under the CDA because its involvement in the stream of commerce far surpasses that of a mere

“publisher or speaker,” this court should find that Amazon should be held liable under Proposition 65. *Id.* at 463-464.

In this case, once Amazon learned that the Products contained high levels of mercury, it could have complied with Proposition 65 by ceasing sales or by providing a warning. Since Amazon could do either of those things without review of, or taking responsibility for, third-party content, and without implicating any of the concerns regarding defamation, slander, or liability for statements of others that led to the passage of the CDA, the section 230(e)(3) savings clause applies here, and there is no basis for CDA preemption.

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## CONCLUSION

Proposition 65 protects Californians from dangerous and hazardous chemicals in consumer products. The Attorney General has successfully utilized this law to safeguard Californians, and to encourage businesses to produce, manufacture and sell safer products in the state. But the erroneous legal standards that the trial court relied on would eviscerate Proposition 65's effectiveness.

The judgment of the trial court should be reversed.

Respectfully submitted,

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California*

Document received by the CA 1st District Court of Appeal.

## CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Rule 8.204(c)(1) of the California Rules of Court that the foregoing document is proportionally spaced, has a typeface of 13 points, and contains 8,127 words, excluding the cover, the tables, the signature block, and this certificate. Counsel relies on the word count of the Word word-processing program used to prepare this brief.

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Document received by the CA 1st District Court of Appeal.

## **EXHIBIT AA**



## The Rapid Alert System for Non-Food Products (RAPEX)

### Notification Reference: A12/0071/13

<b>Risk level</b>	Serious risk
<b>Product user</b>	Consumer
<b>Notifying country</b>	United Kingdom
<b>Product category</b>	Cosmetics
<b>Product</b>	Skin lightening product
<b>Brand</b>	Poonia Brothers (Pak)
<b>Name</b>	Faiza No.1 Beauty Cream
<b>Type/number of model</b>	Unknown
<b>Batch number/Barcode</b>	Unknown
<b>OECD Portal Category</b>	
<b>Description</b>	Pink cardboard packaging containing whitening cream in a pink plastic pot with a purple lid.
<b>Country of origin</b>	Pakistan
<b>Counterfeit</b>	
<b>Risk type</b>	Chemical
<b>Risk description</b>	The product poses a chemical risk because it contains mercury (5430mg/kg). The product does not comply with the Cosmetics directive 76/768/EEC.
<b>Measures adopted by notifying country</b>	<b>Voluntary measures:</b> Withdrawal of the product from the market
<b>Products were found and measures were taken also in</b>	
<b>Images</b>	



## **EXHIBIT BB**

[Menu](#)[Search](#)[Health Topics](#)[Neighborhood Health](#)[Emergency Prep](#)[Publications](#)

# Hazardous Products: Mercury in Soaps and Creams

Certain skin-lightening creams and medicated soaps can contain mercury. Soaps and creams containing mercury are banned in the United States, but may be available for purchase over the counter or on the Internet.

The mercury in these types of products can be absorbed through your skin. Mercury can damage the brain, nervous system and kidneys. It may also damage the skin, cause rashes and blotchy spots, and give skin a grayish color.

The longer and more often products containing mercury are used, the greater the health risk. These products can be especially harmful to children.

## How to Identify Dangerous Soaps and Creams

Products may contain mercury, even if it is not listed as an ingredient on the label. Check packaging materials and any instructions or ingredient lists carefully. Look for:

- “Hg” (the chemical symbol for mercury) or the word “mercury”
- Mercuric iodide, mercuric chloride, mercurous chloride, ammoniated mercury, calomel, mercurio, amide chloride of mercury or mercury oxide
- Instructions to avoid contact with silver, gold, rubber, aluminum and jewelry

Listed below are some skin-lightening creams and medicated soaps that have been found to contain high levels of mercury. Click on the warning sign links to print signs.

**Call 311** to report a store selling products found to contain mercury.

[Expand All](#)[Collapse All](#)

### Products Made in Pakistan

Product Name	Manufacturer
Chandni Whitening Cream	SJ Enterprises

**Product Name****Manufacturer**

- Skin-Lightening Cream Health Warning Sign (PDF)

Face Fresh Beauty Cream

- Skin-Lightening Cream Health Warning Sign (PDF)

Shaheen Cosmetics

Faiza No 1 Beauty Cream

- Skin-Lightening Cream Health Warning Sign (PDF)

A.M. Cosmetics

Faiza Beauty Cream

- Skin-Lightening Cream Health Warning Sign (PDF)

Poonia Brothers

Goree Beauty Cream with Lycopene

- Skin-Lightening Cream Health Warning Sign (PDF)

Goree Cosmetics (Pvt.)  
Ltd.

Golden Pearl Beauty Cream

- Skin-Lightening Cream Health Warning Sign (PDF)

Golden Pearl Cosmetics

Infocus Professional Pearl Beauty Cream

- Skin-Lightening Cream Health Warning Sign (PDF)

Infocus Cosmetology Co.

Kanza Beauty Cream

- Skin-Lightening Cream Diana and Kanza Health Warning Sign (PDF)

Noorani and Company

Sandal Whitening Beauty Cream

- Skin-Lightening Cream Health Warning Sign (PDF)

MMC Cosmetics

Seven Herbal Ubtan Cream

- Skin-Lightening Cream Health Warning Sign (PDF)

C.P.H.L.

Stillman's Freckle Cream

- Skin-Lightening Cream Health Warning Sign (PDF)

Stillman Company Inc.,  
USA

Product Name	Manufacturer
Stillman's Skin Bleach Cream	Stillman Company Inc., USA
<ul style="list-style-type: none"> <li>Skin-Lightening Cream Health Warning Sign (PDF)</li> </ul>	
Zuni Beyoutiful Beauty Cream	Zuni USA LLC
<ul style="list-style-type: none"> <li>Skin-Lightening Cream Health Warning Sign (PDF)</li> </ul>	

### Products Made in Lebanon

Product Name	Manufacturer
Diana Cream	Diana de Beauté
<ul style="list-style-type: none"> <li>Skin-Lightening Cream Diana and Kanza Health Warning Sign (PDF)</li> </ul>	

### Products Made in Spain

Product Name	Manufacturer
Niuma Medicated Antiseptic Soap	Niuma Belleza
Niuma Lemon Medicated Germicidal Soap	Niuma Belleza

### Products Made in Dominican Republic

Product Name	Manufacturer
Crema Santa	N/A
Crema Santa Germicida	N/A
Dermaline Beauty Cream	N/A
Dermaline Skin Cream	N/A
Dermaline Skin Whitening Cream	N/A
Jabon Germicida Contifarma (soap)	N/A



Product Name	Manufacturer
Miss Key Crema Blanqueadora	N/A
Pomada Salva-Vida (balm)	N/A
Recetas de la Farmacia Normal—Crema Blanqueadora	N/A

## Products Made in Jamaica

Product Name	Manufacturer
Deluxe Nadinola Bleaching Cream	N/A

## Products Made in European Economic Community

Product Name	Manufacturer
Germicida 200 (soap)	N/A

## Unknown Place of Manufacture

Product Name	Manufacturer
Due Beauty Cream	
<ul style="list-style-type: none"> <li>Skin-Lightening Cream Health Warning Sign (PDF)</li> </ul>	Kreative Cosmetics (Pvt.) Ltd.
Magia Blanca de Michelle Marie Crema Blanqueadora	N/A
Nufutong	
<ul style="list-style-type: none"> <li>Skin-Lightening Cream Nufutong Health Warning Sign (PDF)</li> </ul>	N/A

## If You Have Used These Products

Immediately stop using skin-lightening creams and medicated soaps that contain elevated mercury or list mercury as an ingredient.

If you use non-prescription products to lighten your skin or for skin disorders, talk to your doctor. If you do not have a doctor, **call 311**.

Appropriately dispose of mercury containing products. Do not throw these products in the trash. Place unused product(s) in a sealed plastic bag until they can be disposed of properly at an NYC Department of Sanitation SAFE Disposal event or Special Waste Drop-off location. Thoroughly wash your hands and other exposed body parts that touched the products. You should wash surfaces that came into contact with these products.

Be sure to keep these and other hazardous consumer products out of reach of children.

For more information about mercury and health, call the Poison Control Center at 212-POISONS (212-764-7667).

## Additional Resources

- Skin-Lightening Creams Warning Postcard (PDF)  
Other Languages: Español | 繁體中文 | 简体中文 | বাংলা | Français | اردو
- Lead, Mercury and Arsenic in Consumer Products Factsheet (PDF)  
Other Languages: Español | 中文 | 简体中文 | Français | العربية | हिन्दी | اردو | ਪੰਜਾਬੀ | Português | Русский | יידיש | বাংলা
- Population-Based Inorganic Mercury Biomonitoring
- FDA: Skin Products Containing Mercury

## More Information

- Mercury
- Hazardous Consumer Products
- Cosmetics and Religious Powders

## **EXHIBIT CC**

## Skin Lightening Products Found to Contain Mercury, Hydroquinone and/or Steroids

TESTED PRODUCTS | UPDATED 7/1/2021



*These skin lightening products were found to contain mercury, hydroquinone and/or steroids.*

### Skin lightening products are rooted in colorism

Skin lightening products may contain toxic chemicals that can negatively impact the consumer's health and family living in the same space, such as children or elders. Reasons for using skin lightening products vary, though are often rooted in colorism.

Colorism is defined as discrimination that privileges light-skinned people over people with darker skin.

Promoting the love of the skin we were each naturally born with is one way to fight colorism. Search for #LoveYourSkin to find resources and inspirational messages.

Learn more about skin lightening products that may contain mercury and how to [Choose Health and Avoid Skin Lightening](https://www.health.state.mn.us/communities/environment/skin/gpfs.html) (<https://www.health.state.mn.us/communities/environment/skin/gpfs.html>).



SKIN LIGHTENING PRODUCTS FOUND TO CONTAIN MERCURY, HYDROQUINONE  
AND STEROIDS**Skin Lightening Product and Level of Mercury, Hydroquinone and/or Steroids Detected**

In testing conducted by the Minnesota Pollution Control Agency (MPCA) and Minnesota Department of Health (MDH), the skin lightening products pictured below exceeded the U.S. Food and Drug Administration's limit of no more than one part per million (ppm) of mercury in cosmetic products, and/or contain hydroquinone or steroids. While hydroquinone and steroids can be legally found in some products intended for inflammatory skin conditions, those products are typically intended for only short-term use when appropriate, and they must meet stringent requirements for ingredient concentration, labeling and storage. Consumers may sometimes see the steroid hydrocortisone as an ingredient in over the counter products, however a product with unknown concentrations of any of these steroids is a higher health risk to consumers because of their potential toxicity. Being exposed to the chemicals in these products could cause serious health problems. **DO NOT USE ANY OF THESE PRODUCTS.**

This document only lists products tested by MPCA and MDH and were found to contain mercury, hydroquinone and/or steroids. **THIS LIST IS NOT MEANT TO BE COMPREHENSIVE.** Not all skin lightening products contain mercury, hydroquinone and/or steroids, **BUT PRODUCTS NOT LISTED HERE MAY ALSO CONTAIN MERCURY, HYDROQUINONE AND/OR STEROIDS.**

Skin lightening products tested in other parts of the U.S. have also been found to contain mercury, and mercury may also be present in products that have not been tested. See information below about untested products and disposal of products containing mercury.

A wide variety of skin lightening products is available, from many different sources, and it isn't possible to test all of them for mercury. For that reason, these products should always be used with caution. At a minimum, always make sure that:

- The product you are using has an ingredients list AND
- Mercury is not listed as an ingredient. Mercury may be listed under a number of different names, so check for anything that includes the words “calomel,” “mercuric,” “mercurous” or “mercurio.”

**Safely dispose of skin lightening products**

If you have skin care products that may contain mercury, take them to a Household Hazardous Waste (HHW) site in your area. See the Minnesota Pollution Control Agency website to [find your HHW collection site \(https://www.pca.state.mn.us/waste/find-your-household-hazardous-waste-collection-site\)](https://www.pca.state.mn.us/waste/find-your-household-hazardous-waste-collection-site).



MSII Express Peeling Pearl Cream

Mercury: 38,000 ppm



Rice Milk Whitening Cream

Mercury: 7,470 – 35,000 ppm

Steroids: Betamethasone, Betamethasone  
17-Valerate



Meyyong Seaweed Super Whitening – Extra  
Whitening & Face Lift

Mercury: 30,000 ppm

Steroids: Betamethasone, Betamethasone  
17-Valerate



Monsepa Express Peeling

Mercury: 30,000 ppm



Pomegranate Whitening Set "Queenly Girl"  
- 3 bottles, serum, and soap

Mercury: 0.53-29,000 ppm

Hydroquinone: Detected

Steroids: Betamethasone, Betamethasone  
17-Valerate



Anti Acne Melasma Cream

Mercury: 23,000 ppm

Steroids: Betamethasone, Betamethasone  
17-Valerate



Glutathione Cream White & Bright

Mercury: 20,000 ppm

Steroids: Betamethasone, Betamethasone  
17-Valerate



Jing Zhuang Jinyiqi Beauty Whitening Set

Mercury: 0.69-20,000 ppm

Steroids: Betamethasone, Betamethasone  
17-Valerate



Madame Organic Set – Whitening Arbutin, Collagen Mask, Pearl Skin, and Sunscreen

Mercury: 18,000 ppm

Steroids: Clobetasol, Hydrocortisone, Fluocinolone



Whitening Cream

Mercury: 17,000 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate



Hynes - La Tia Mana

Mercury: 13,000 ppm

Steroid: Clobetasol



CCM Cream

Mercury: 3,940 – 13,000 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate, Clobetasol





Cell Repair Placenta Sheep Cream  
 Mercury: 6,460 – 13,000 ppm  
 Steroids: Betamethasone, Betamethasone 17-Valerate



Polla Gold - Super White Perfects  
 Mercury: 12,000 ppm  
 Steroids: Betamethasone, Betamethasone 17-Valerate



Hnub Yiqi - Beauty Day & Night Cream  
 Mercury: 0.69 (day cream) ppm, 11,999 (night cream) ppm  
 Steroids: Betamethasone, Betamethasone 17-Valerate



Ba Be Special Cream  
 Mercury: 11,000 ppm  
 Steroids: Betamethasone, Betamethasone 17-Valerate, Clobetasol



88 Total White Underarm Cream

Mercury: 11,000



Avocado Night Cream

Mercury: 3,730 – 9,700 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate, Clobetasol



Qian Li

Mercury: 9,300 ppm



Hua Shu Li

Mercury: 7,700 ppm

Steroids: Clobetasol



Rice Milk Whitening Cream - Lighten Skin

Mercury: 7,600 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate



HIYADY Hyaluronic Filler & ULTRA White Night Cream

Mercury: 7,400 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate



Snow White Armpit Whitening Underarm Cream

Mercury: 6,700 ppm



Super Gold Caviar Whitening Cream

Mercury: 5,700 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate



Lovely Paris Extra Brightening

Mercury: 5,500 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate



CCM Miss Beauty 7 Days White

Mercury: 3,700 – 7,290 ppm

Steroids: Betamethasone, Clobetasol



Polla Anti-Acne Cream

Mercury: 3,300 ppm



Mclean – Young and Fresh

Mercury: 2,400 ppm

Steroid: Clobetasol





Natural Cream Night Cream Skin Care

Mercury: 2,200 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate, Clobetasol, Hydrocortisone, Betamethasone Dipropionate



Milk Cream

Mercury: 1,700 – 4,500 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate



OK Brand

Mercury: 1,600 – 1,860 ppm

Steroids: Betamethasone, Betamethasone 17-Valerate, Clobetasol



(Unmarked Jar with Rose Design)

Mercury: 1,300 ppm

Steroids: Betamethasone, Clobetasol



Specail Cream

Mercury: 800 ppm

Steroids: Betamethasone, Clobetasol,  
Fluocinolone



Popieu Turmeric Facial Cream

Mercury: 420 ppm

Steroids: Betamethasone, Fluocinolone



B.T Special Cream

Mercury: 51 – 96 ppm

Steroid: Clobetasol



Promina Ginseng Pearl Cream

Mercury: 29 ppm



Qian MEI yellow and white jars

Mercury: 6.4 – 4,650 ppm



Facial Mask Anti-Oxidant and Whitening

Mercury: 17 ppm



Maiv Lis (red flower)

Mercury: 14 ppm

Steroids: Betamethasone, Fluocinolone



Yoko Yogurt Milky Body Lotion

Mercury: 9.3 ppm



Jing Zhuang Jinyiqi Whitening Sun Block  
(red)

Mercury: 8.2 ppm



Silky Cool Extra

Mercury: 7 ppm



Arche Pearl Cream

Mercury: 5.2 ppm



Eity Eight - Dewy Face Glow

Mercury: 5 ppm





Mclean – Apricot Scrub

Mercury: 4.7 ppm



Pearl Cream

Mercury: 3.6 ppm



KA White – Night Serum

Mercury: 3.2 ppm



(No English Product Name)

Mercury: 1.6-2.2 ppm



Doctor Luei Speckle Killer

Mercury: 1.5-2 ppm

Hydroquinone: Detected



Fo Me Herbal Mask

Mercury: 2 ppm



Hiso Diamond MGT

Mercury: 1.6 ppm



Jing Zhuang Jinyiqi – Day Cream (pink)

Mercury: 1.5 ppm

Steroids: Betamethasone, Betamethasone  
17-Valerate



12 Plus Whitening Less Shave  
Mercury: 1.2 ppm



Darlene Lightening Star Fruit Soap  
Mercury: 1.1 ppm



Kem Nam Tan Nhang  
Steroid: Clobetasol



(No English Product Name)  
Steroids: Betamethasone, Clobetasol



Maiv Lis – Tshuaj Pleev Plu Mos  
Steroids: Betamethasone, Fluocinolone



Phone  
Steroids: Betamethasone, Fluocinolone



One Today

Steroids: Betamethasone, Clobetasol



MSL Cream

Steroids: Betamethasone, Fluocinolone



Seaweed Extra Whitening & Facelift – Blue Lid

Hydroquinone: Detected

Steroids: Betamethasone, Betamethasone-17, Hydroquinone



Beauty Whitening Cream

Steroid: Clobeta



## Additional Products Tested for Mercury

The following products were tested in 2011 and 2016 for mercury only; testing did not include hydroquinone or steroids. **DO NOT USE ANY OF THESE PRODUCTS.**



BB Health & Beauty

Mercury: 54,000 ppm



Lemon Herbal Whitening Cream

Mercury: 33,000 ppm

Mercury: 28,800 ppm



(No English Product Name)



Whitening Cream

Mercury: 22,000 ppm



Lulanjina – Yellow Cream

Mercury: 16,700 (yellow) ppm, 12,800 (white) ppm



JIAOYAN

Mercury: 10,200 ppm



(Unlabeled Container) – packaged with soap and anti-fungal cream

Mercury: 9,950 ppm



Prime White

Mercury: 9,590 ppm



BBC Creams

Mercury: 9,130 (green) ppm, 4,390 (blue) ppm, 9 (white) ppm



Crème Diana C.T.R.

Mercury: 6,370 ppm



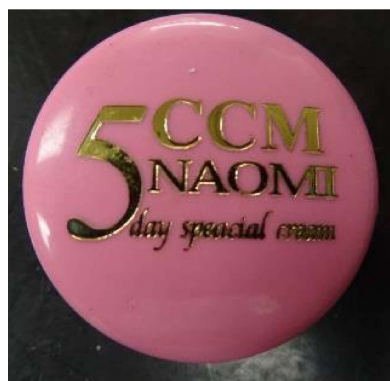
CCM Perfect 501 White Cream

Mercury: 5,810 ppm



Be Be Special Cream

Mercury: 5,600 ppm



CCM Naomi 5 Day Special Cream

Mercury: 5,400 ppm



CCM Cream

Mercury: 5,180 ppm



Fasco

Mercury: 4,600 ppm



BB Cream

Mercury: 4,350 ppm



CCM V Special Cream

Mercury: 4,320 ppm



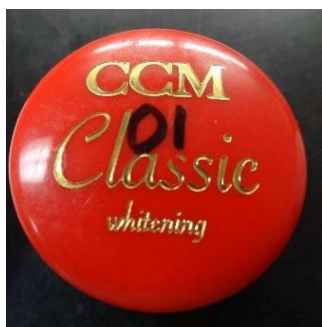
CCM Q10 Extra Whitening

Mercury: 4,090 ppm



GCM Whitening Special Cream

Mercury: 3,440 ppm



CCM Classic

Mercury: 3,170 ppm



Rojzy Jiali

Mercury: 2,230 ppm





Jiao Li

Mercury: 1,700 ppm



Mild Cream

Mercury: 1,630 ppm



(No English Product Name)

Mercury: 1,600 ppm



Cream Aghader

Mercury: 135 ppm



Savor Pour L'acne – Diana Soap

Mercury: 31 ppm

Minnesota Department of Health  
Environmental Surveillance and Assessment Section  
PO Box 64975  
St. Paul, MN 55164-0975  
[www.health.state.mn.us](http://www.health.state.mn.us)

07/01/2021

To obtain this information in a different format, call: 651-201-4899.

## **EXHIBIT DD**

# Skin Products Containing Mercury and/or Hydroquinone

In the past few years, FDA and state health officials have discovered numerous products marketed as skin lighteners that contain ingredients like mercury and/or hydroquinone. FDA does not allow mercury in drugs or in cosmetics, except under very specific conditions where there are no other safe and effective preservatives available – conditions that these products do not meet. Over-the-counter (OTC) skin lightening products containing the active drug ingredient hydroquinone (<https://www.fda.gov/drugs/drug-safety-and-availability/fda-works-protect-consumers-potentially-harmful-otc-skin-lightening-products>) are unapproved drugs and are not generally recognized as safe and effective (not GRASE). Skin lightening products are generally marketed to be applied topically but may also be injected.

Often, mercury or hydroquinone is not declared on the product label. There have been cases in which people exposed to such products have had mercury poisoning or elevated levels of mercury in their bodies. Additionally, FDA has received reports of serious side effects including skin rashes, facial swelling, and ochronosis (discoloration of skin) from the use of skin lightening products containing hydroquinone.

The table below provides the mercury and/or hydroquinone content of skin lighteners tested by FDA laboratories. Consumers should beware purchasing and using any such products. If you have questions, call your health care professional or the Poison Center at 1-800-222-1222; it is open 24 hours a day.

## For More Information and to Report a Problem

- Skin Facts! Resources (<https://www.fda.gov/consumers/minority-health-and-health-equity/skin-facts-what-you-need-know-about-skin-lightening-products>).
- Mercury Poisoning Linked to Skin Products (<https://www.fda.gov/consumers/consumer-updates/mercury-poisoning-linked-skin-products>).
- FDA works to protect consumers from potentially harmful OTC skin lightening products (<https://www.fda.gov/drugs/drug-safety-and-availability/fda-works-protect-consumers-potentially-harmful-otc-skin-lightening-products>).
- Reporting Unlawful Sales of Medical Products on the Internet (<https://www.fda.gov/safety/report-problem-fda/reporting-unlawful-sales-medical-products-internet>).

- MedWatch: The FDA Safety Information and Adverse Event Reporting Program (<https://www.fda.gov/safety/medwatch-fda-safety-information-and-adverse-event-reporting-program>).
- Dial 1-888-INFO-FDA (1-888-463-6332) or call the FDA Consumer Complaint Coordinator for your state or region (</safety/report-problem-fda/consumer-complaint-coordinators>).

### Skin Products Found to Contain Mercury and/or Hydroquinone

Product Name and Image	Year Tested	Country of Origin	Lab Results - Mercury Content (parts per million)	Lab Results - Hydroquinone Content (%)
<u>CCM Special Cream Turmeric</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52573949331/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52573949331/in/album-72157711076870842/</a> ) <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022		8,088 ppm	
<u>CCM Perfect 365 White Cream</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574386480/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574386480/in/album-72157711076870842/</a> ) <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022		4,322 ppm	
<u>Be Be Special Cream CCM/Yellow</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52573471132/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52573471132/in/album-72157711076870842/</a> ) <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022		8,909 ppm	
<u>Be Be Special Cream</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52573471132/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52573471132/in/album-72157711076870842/</a> ) <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022		3,110 ppm	
<u>La Tia Mana Crema Limpiadora y Curativa</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574488213/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574488213/in/album-72157711076870842/</a> ) <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	Mexico	5,432 ppm	
<u>Ling Zhi BB Whitening Cream</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574489983/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574489983/in/album-72157711076870842/</a> ) <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	Japan	1,393 ppm	



Product Name and Image	Year Tested	Country of Origin	Lab Results -	
			Mercury Content (parts per million)	Lab Results - Hydroquinone Content (%)
<u>Skin care &amp; Cosmetic MSII Whitening Peeling</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574237049/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574237049/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	France	1,581 ppm	
<u>Skin care &amp; Cosmetic MSII Express Peeling</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574492718/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574492718/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	France	5,797 ppm	
<u>Collagen Plus - Vit E Cream, Night Cream</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574365298/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574365298/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022		3,670 ppm	2.0%
<u>Aneeza Gold Beauty Face Cream</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574209904/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574209904/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	Pakistan	12,400 ppm	
<u>HIYADY Glutathione Cream White &amp; Bright</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574401065/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574401065/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022		15,900 ppm	
<u>Light &amp; Natural CAROTONE Black Spot Corrector CREME B.S.C</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52574142559/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52574142559/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	Côte d'Ivoire	--	4.4%
<u>African Queen Strong Bleaching Treatment</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52573463047/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52573463047/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	United States	--	3.6%
<u>Amos Make Me White in 7 Days</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52576466310/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52576466310/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	United States	--	1.2%
<u>B.B. Clear Dark Spot Remover Cream</u> ( <a href="https://www.flickr.com/photos/fdaphotos/52576565673/in/album-72157711076870842/">https://www.flickr.com/photos/fdaphotos/52576565673/in/album-72157711076870842/</a> ), <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗</a> ( <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">http://www.fda.gov/about-fda/website-policies/website-disclaimer</a> )	2022	Togo	--	4.4%

Product Name and Image	Year Tested	Country of Origin	Lab Results -	
			Mercury Content (parts per million)	Lab Results - Hydroquinone Content (%)
<u>Kim Whitening Pearl and Snowlotus Cream</u> <a href="https://flickr.com/photos/fdaphotos/48800566327/in/album-72157711076870842/">(https://flickr.com/photos/fdaphotos/48800566327/in/album-72157711076870842/)</a> , <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗(http://www.fda.gov/about-fda/website-policies/website-disclaimer)</a>	2019		47 ppm	
<u>Golden Pearl Beauty Cream</u> <a href="https://flickr.com/photos/fdaphotos/48800049708/in/album-72157711076870842/">(https://flickr.com/photos/fdaphotos/48800049708/in/album-72157711076870842/)</a> , <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗(http://www.fda.gov/about-fda/website-policies/website-disclaimer)</a>	2019		12,000 ppm	
<u>Chandni Whitening Cream</u> <a href="https://flickr.com/photos/fdaphotos/48800562492/in/album-72157711076870842/">(https://flickr.com/photos/fdaphotos/48800562492/in/album-72157711076870842/)</a> , <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗(http://www.fda.gov/about-fda/website-policies/website-disclaimer)</a>	2019	Pakistan	8,790 ppm	
<u>Goree Beauty Cream</u> <a href="https://flickr.com/photos/fdaphotos/48800543007/in/album-72157711076870842/">(https://flickr.com/photos/fdaphotos/48800543007/in/album-72157711076870842/)</a> , <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗(http://www.fda.gov/about-fda/website-policies/website-disclaimer)</a>	2019		17,200 ppm	
<u>Sandal Whitening Beauty Cream</u> <a href="https://flickr.com/photos/fdaphotos/48800049223/in/album-72157711076870842/">(https://flickr.com/photos/fdaphotos/48800049223/in/album-72157711076870842/)</a> , <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗(http://www.fda.gov/about-fda/website-policies/website-disclaimer)</a>	2019	Pakistan	13,100 ppm	
<u>Monespa Express Peeling</u> <a href="https://flickr.com/photos/fdaphotos/48800407111/in/album-72157711076870842/">(https://flickr.com/photos/fdaphotos/48800407111/in/album-72157711076870842/)</a> , <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗(http://www.fda.gov/about-fda/website-policies/website-disclaimer)</a>	2019		5,030 ppm	
<u>Face Fresh Beauty Cream</u> <a href="https://flickr.com/photos/fdaphotos/48800396831/in/album-72157711076870842/">(https://flickr.com/photos/fdaphotos/48800396831/in/album-72157711076870842/)</a> , <a href="http://www.fda.gov/about-fda/website-policies/website-disclaimer">↗(http://www.fda.gov/about-fda/website-policies/website-disclaimer)</a>	2019		18,500 ppm	

## **EXHIBIT EE**

# **‘Prime’ Time to Stop Online Sales of Illegal High Mercury Skin Lightening Products**



**February 2023**



"Prime" time to stop online sales of illegal high mercury skin-lightening products.

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February 2023

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# 1 Executive Summary

## Background

This report builds upon the previous work of the Zero Mercury Working Group (ZMWG) in exposing the toxic trade in skin lightening products (SLPs) laced with mercury. SLPs are sold globally via online platforms and, in this particular case, the focus is on illegal SLP sales by Amazon.com in the United States. As co-lead of the ZMWG, the Mercury Policy Project (MPP) has led investigations into a wide range of SLP issues including their composition, manufacture, adulteration, distribution and marketing, as well as a variety of efforts to raise awareness and protect consumers from toxic SLPs.

Despite well-known health risks, unscrupulous cosmetics manufacturers often add mercury compounds to SLPs. Then distributors and retailers, including Amazon.com, benefit from this toxic trade. Mercury lightens the skin by suppressing the production of melanin and can also remove age spots, freckles, blemishes and wrinkles. Adolescents also use SLPs, as mercury acts as an anti-bacterial for the treatment of acne.

Although SLPs have been banned in the U.S. since 1973 if they contain mercury concentrations over 1 ppm, they continue to be sold illegally both through local markets as well as online. Since the start of the pandemic, online sales have grown significantly. Violations of consumer, health and safety laws not only threaten public health, but create an uneven playing field since “brick and mortar” stores must comply with domestic laws that may be evaded online by E-commerce platforms like Amazon.

Curtailing E-marketing of mercury-added SLPs is daunting, given the challenges of holding online platforms responsible. This lack of accountability removes incentives for online platforms to ensure product safety and result, at best, in episodic efforts to remove illegal products. Online consumers may get limitless choice, but have little guarantee that a product is compliant with relevant regulations.

## Test results

This report presents the third round of testing of suspect SLPs on Amazon.com since 2018. During the fall of 2022, MPP purchased suspect SLPs available on Amazon.com, which were sent to Legend Technical Services Laboratory in St. Paul, Minnesota for testing. The mercury concentration was determined by laboratory based Inductively Coupled Plasma Optical Emission Spectroscopy (ICP-OES) analysis.

As presented in the table below, twenty-one (21) suspect SLPs were purchased from Amazon.com, and nineteen (19) of those were found to have mercury concentrations over 1 ppm, the legal limit. The levels of mercury detected by the lab in those 19 SLPs ranged from 1.5 ppm to 8,500 ppm.

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### Mercury-containing skin lighteners purchased from Amazon, 2022

Product name	Hg ppm	Country/producer	Product photo	Exemplars	Hazard alert
<b>Nunn Care</b>	1500	Mexico/ Miligros Cosmetics		<a href="#">Nunn Care, 1 Ounce (Pack of 1)</a> ASIN: B096TKM6GX	States of California, Minnesota
<b>Kojie San</b>	7.0	Philippines/ Marketasia		<a href="#">Kojie San Dream White Anti-Aging Skin Care</a> ASIN: B008J3A9GA	Sacramento County, CA
<b>Jalea Real Grisi</b>	3.9	Mexico/ Factor Int'l/Grishnos		<a href="#">GRISI Grisi Royal Jelly Cream, 3.8 ounces</a> ASIN: B08J994BG3	Sacramento County, CA
<b>Clear N Smooth</b>	6.6	USA/ Hawkнад Specialty Products LLC		<a href="#">Clear-n-smooth Plus Cream 4 Oz</a> ASIN: B00927VD0S	
<b>Crusader</b>	16	Spain		<a href="#">CRUSADER Skin Lightening Cream Regular Formula 1.76 OZ</a> ASIN: B000142P1W	EU RAPEX
<b>Glutitone</b>	160	Korea		<a href="#">HIYADY Cream (Pink) Enriched with Hyaluron-glutathione extract</a> ASIN: B07QYJ8DBY	State of Minnesota, US FDA
<b>Promina</b>	16	Thailand		<a href="#">3 X Promina Ginseng Pure Pearl Face Cream Removal Freckle &amp; Acne Dark Spot</a> ASIN: B009JCUGHW	State of Minnesota
<b>African formula</b>	9.7	Spain		<a href="#">African Formula Skin Tone Creme 1.76 oz.</a> ASIN: B000142P1W	
<b>Carotone</b>	1.9	Côte d'Ivoire		<a href="#">Carotone B.S.C Cream</a> ASIN: B0B3824MB3	EU RAPEX, US FDA
<b>Faiza</b>	7,000	Pakistan/ Poonia Brothers		<a href="#">fair n pink Faiza Beauty Cream (Pink, 50 g)</a> ASIN : B081TBPC35	NYC Dept of Health; EU RAPEX
<b>Faiza</b>	7,400	Pakistan/ Poonia Brothers		<a href="#">fair n pink Faiza Beauty Cream (Pink, 50 g)</a> ASIN: B081TBPC35	NYC Dept of Health/ EU RAPEX
<b>Yoko Whitenin g</b>	1.5	Thailand		<a href="#">YOKO Whitening Spa Salt For Armpit &amp; Bikini Area 220g. White</a> ASIN : B00VOUJWD6	State of Minnesota



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<b>Snow Lotus</b>	19	Thailand		<a href="#">KOK Liang Snow Lotus Cream Fast Treatment Repair Damage Skin 50g Made in Thailand</a> ASIN: B008DR051Q	State of California
<b>San ing Face Cream</b>	7.8	Taiwan or China		<a href="#">Pearl Cream , San Ing Face Cream , Value 2 Pak ( 2 X 0.3 Oz ) by scthkido</a> ASIN: B018IVNLHQ	State of California
<b>Dodo White Up</b>	2.1	United Kingdom		<a href="#">Dodo Beauty Lightening Lotion</a> ASIN: B01LXXFK8F	Ghana FDA
<b>Sakura</b>	0.66	Thailand		<a href="#">Sakura White DJ White Gluta speed White UVA UVB SPF 50 PA ++ 15 g. Silk Sunscreen (1</a> ASIN: B07H8KC9RG	State of California, Sacramento County, CA
<b>Immediat Claire</b>	4.5	Ghana, Ghandour Cosmetics Ltd.,		<a href="#">Immediat Claire Maxi-Beauty Lightening Body Cream With Carrot Extract 250 ml - 8m4</a> ASIN: B09FHMMZ6K	
<b>Nunn Care</b>	6.8	Mexico/ Miligros Cosmetics		<a href="#">Nunn Care, 1 Ounce (Pack of 1)</a> ASIN : B096TKM6GX	States of California, Minnesota
<b>Faiza</b>	8,400	Pakistan/ Poonia Brothers		<a href="#">fair n pink Faiza Beauty Cream (Pink, 50 g)</a> ASIN: B081TBPC35	NYC Dept of Health/ EU RAPEX
<b>Faiza</b>	8,500	Pakistan/ Poonia Brothers		<a href="#">fair n pink Faiza Beauty Cream (Pink, 50 g)</a> ASIN: B081TBPC35	NYC Dept of Health/ EU RAPEX
<b>Dermalin e</b>	0.79	USA, Neovema		<a href="#">Dermaline - Cocoa Butter Body Cream with Jojoba Oil, Collagen and Vitamin E 2 Oz.</a> ASIN : B08W8MM5T5	

**Conclusions**

High-mercury SLPs continue to be present on Amazon.com. Amazon appears to be effectively profiting from a counterfeit market where SLPs contaminated with mercury are being sold illegally in the U.S. and worldwide.

Most of the suspect SLPs purchased from Amazon.com were already on hazard lists identified by various governments, including FDA, the states of California and Minnesota, California counties and New York City. By implementing the recommendations below, Amazon and other E-platforms, could and should better protect consumers from the dangers of illegal high mercury SLPs.

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## Recommendations

While recommendations included in earlier ZMWG reports should also be considered, this report specifically recommends the following:

- I. The Conference of the Parties should consider amending the Minamata Convention to ban SLP sales, advertising and offering of sales of SLPs with mercury levels over 1 ppm.
- II. The US FDA should take steps to eliminate online sales of mercury-added SLPs, similar to recent actions it has taken to curtail online sales of certain SLPs containing hydroquinone.
- III. Any policies, agreements or settlements with E-commerce platforms shouldn't be any weaker than what has been agreed to elsewhere (e.g., in Europe, etc.)
- IV. Other recommendations for E-commerce platforms include the following:
  1. Third party online sales of skin lightening products should be eliminated entirely if counterfeit marketing can't be prevented, since toxic skin lightening sales affects this entire category.
  2. Develop a means to test and ensure compliance with mercury laws when marketing SLPs.
  3. Commit to regularly monitor government websites and detention lists, the ZMWG database and others, and remove suspect SLPs.
  4. Use filtering mechanisms aimed at preventing new listings offering the same items as those previously removed, and implement a penalty point system for repeat offenders.
  5. Sellers should be informed when products are taken down and their products flagged.
  6. All safety concerns notified by consumers via customer service channels should automatically trigger an internal investigation and, where appropriate, the products should be removed.
  7. Procedures should be implemented that allow consumers to signal product safety concerns directly, and when suspect SLPs are identified, platforms should respond with product removals within two days, reaction to notifications within five days, etc.
  8. Measures should be taken to prevent banned SLPs from being searchable and/or purchasable again by consumers, even if the products are re-listed on the platform.
  9. Platforms should commit to report regularly on measures taken to ensure effective communication of safety hazards and issue prompt recalls of defective products, as required by the European Product Safety Pledge.

## 2 Introduction

This report builds upon the previous work of the Zero Mercury Working Group (ZMWG) in exposing the toxic trade in skin lightening products (SLPs) laced with mercury by online platforms globally<sup>i</sup> and in this particular case, suspect SLP sales by Amazon.com in the United States. As co-lead of the ZMWG, the Mercury Policy Project (MPP) has led investigations into a wide range of issues related to mercury-added SLPs, including their composition, manufacture, adulteration, distribution and marketing, as well as a variety of efforts to raise awareness and protect consumers from toxic SLPs.

Despite well-known health risks, unscrupulous cosmetics manufacturers often add mercury compounds to SLPs, with skin lightening creams often containing the highest mercury levels. Then distributors and retailers, including online platforms such as Amazon.com, benefit from this toxic SLP trade. Mercury lightens the skin by suppressing the production of melanin and can also remove age spots, freckles, blemishes and wrinkles. Adolescents also sometimes use SLPs, as mercury is an effective anti-bacterial for the treatment of acne.

The most common active ingredient is inorganic mercury because it can be readily mixed into the creams. The most common mercury compounds used in SLPs are mercury (II) chloride, also known as calomel, and ammoniated mercury.<sup>ii</sup>

The widespread use of SLPs – with or without mercury – is particularly concerning because they are a symbol of societies grappling with internalized racism and colorism. According to the State of Minnesota:

*“Skin lightening products may contain toxic chemicals that can negatively impact the consumer’s health and family living in the same space, such as children or elders. Reasons for using skin lightening products vary, though are often rooted in colorism. Colorism is defined as discrimination that privileges light-skinned people over people with darker skin.”<sup>iii</sup>*

Although mercury-added SLPs have been banned in the U.S. since 1973, they continue to be sold illegally both through local markets as well as online.<sup>iv</sup> Online sales of SLPs are expanding rapidly, further accelerated by the Covid-19 pandemic.<sup>v</sup> Curtailing online marketing of mercury-added SLPs is daunting, given the challenges of regulating online sales. Violations of health and safety laws - facilitated by e-commerce sites - not only threaten public health, but also create an uneven playing field since “brick and mortar” stores must comply with domestic laws that may be evaded online.

Manufacturers rarely label these products properly, and U.S. marketers often cater to Latino, Asian, African, and Middle Eastern communities. Furthermore, the Minamata Convention on Mercury<sup>vi</sup> also bans the manufacture and trade in cosmetics containing over 1 ppm mercury. As Parties to the Convention, the U.S. and many other countries are legally obligated to enforce this standard.

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The illegal production and trade of mercury-added SLPs may often continue unimpeded because of inadequate regulation, weak enforcement, unsatisfactory in-country, bi-lateral, regional and international cooperation along with inadequate resources devoted to this issue. This lack of accountability removes incentives for platforms to ensure product safety and results, at best, in episodic efforts to remove illegal products.

E-commerce often cuts across the boundaries of a country’s product, environment, health and safety regulations. For a number of interconnected reasons, national laws in many countries allow online platforms to evade responsibility for the SLPs sold on their platforms. Online consumers may get limitless choice, but have little guarantee that a product is compliant with relevant regulations.

Furthermore, E-commerce further complicates the implementation of regulations, and associated inspections and sanctions for non-compliance, since its structure is complex and not very transparent. Unclear division of responsibilities are common in the E-commerce supply chain, with platforms often claiming exemption from “secondary liability.” Corrective action appears to occur only after an unsafe product has been placed on the market, and typically only after a documented egregious injury results in a lawsuit. Consequently, policymakers and the courts are increasingly challenged by a legal framework where consumers are left inadequately protected.

E-commerce platforms consistently avoid the normal economic cost of responsibility by neglecting to do conventional due diligence that would be required from any other commercial actor involved in the sale and delivery of drugs and cosmetics. Furthermore, online platforms readily offer a low-cost immunizing guarantee which removes the manufacturer, distributor and retailer from accountability for producing and selling illegal SLPs. Failing to even properly seek the guarantee that may deter sellers unwilling to vouch for their products is unfair at best, considering the obligation to which brick and mortar stores must typically adhere.

In response, many countries are strengthening regulations dealing with high mercury cosmetics,<sup>vii</sup> and adding additional regulatory and voluntary tools and approaches, given that skin lightening has reached epidemic levels in many nations.<sup>viii</sup> Due to a variety of challenges, some countries have banded together to control illegal SLPs. The European Union e-Safety Gate Rapid Alert System (RAPEX) has been implemented to restrict the supply of dangerous products.<sup>ix</sup> A similar system is in place in Southeast Asia under ASEAN.<sup>x</sup> Other examples of government controls and regulations can be found in the ZMWG 2019 Enforcement report.<sup>xi</sup>

Although many manufacturers have long accepted not to add mercury to SLPs due to FDA regulations, consumers are still not sufficiently protected, particularly from online sales. This is because FDA has in the past conducted little oversight, apart from occasional public outreach and issuing import alerts for a limited number of illegal high mercury SLPs, primarily from abroad. Recently, however, there have been indications that the FDA is becoming more active.<sup>xii</sup>



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This correlates with a recent Google trends report suggesting that consumer awareness is growing, with the search phrase "cosmetics with mercury" increasing by 350%.<sup>xiii</sup>

Federal and state laws provide opportunities to curtail illegal sales of mercury-added SLPs. Recently, the 2020 CARES Act provided FDA with the authority to ban “unapproved new drugs” such as SLPs if they are *“intended to affect the structure or any function of the body.”*<sup>xiv</sup> While some action seems to have been taken against cosmetics containing hydroquinone, FDA has failed to take similar action against high mercury SLP sales, even when provided with evidence.<sup>xv</sup>

Several states have restrictions on mercury-added SLPs. The California Supreme Court recently upheld a lower court ruling that Amazon must warn consumers about products containing chemicals listed by the state as carcinogens or reproductive toxicants.<sup>xvi</sup> Illinois and Minnesota prohibit the sale of cosmetics that contain intentionally added mercury.<sup>xvii</sup>

In January 2020 and November 2021, the Minnesota Pollution Control Agency (MPCA) purchased several products through the Amazon website that contained intentionally added mercury.

In a November 2, 2022, letter to Amazon,<sup>xviii</sup> MPCA requested that Amazon take the following actions:

- Discontinue all sales and distribution of these products nationwide.
- Recall all products documented to contain mercury where Amazon and/or its marketplace seller have records of a purchase and purchaser contact information.
- Prominently post a notice on the Amazon recall page (if one exists) regarding the mercury content of these products and provide detailed product and label information that is sufficient for customers to accurately identify products that they have purchased that contain or are likely to contain mercury.
- Provide the MPCA with copies of the recall notices and other communications to sellers and customers.
- Conduct outreach and training to all of your existing and potential new marketplace sellers regarding state and federal prohibitions (see Attachment 1).
- Update your guidance to marketplace sellers on prohibited products, on any certifications they are required to sign, and audit their compliance.
- In addition, Amazon may wish to consider developing a means to test and ensure compliance with mercury laws for products sold on the Amazon.com platform.

Most recently in December 2022, New York adopted a law similar to the Minnesota law that will enter into force in June 2023,<sup>xix</sup> and provisions in a similar California law will enter into force in 2025.

Louisiana and Rhode Island regulations prohibit formulated products containing more than 10 ppm mercury,<sup>xx</sup> while Connecticut tolerates up to 250 ppm mercury.<sup>xxi</sup> Some states, including California,<sup>xxii</sup> also require mercury added SLPs to be disposed of as hazardous waste.

### 3 Health concerns

SLPs containing mercury compounds have been shown to present significant health risks,<sup>xxiii</sup> especially to pregnant women and those who may be exposed indirectly, including nursing babies and young children.<sup>xxiv</sup> Mercury in SLPs can readily enter the body via absorption through the skin, inhalation or orally.<sup>xxv</sup> Dermal absorption occurs with each application; inhalation occurs when mercury vapor off-gases, and ingestion occurs post application as a result of normal hand-to-mouth behavior, such as eating or preparing food.

Regular use of mercury added SLPs reduce the skin's resistance to bacterial and fungal infections and can lead to rashes, skin discoloration and blotching. Chronic exposure to mercury at very low levels can cause neurological and kidney impairment. Long-term exposure may also damage the eyes, lungs, kidneys, digestive, immune and nervous systems.<sup>xxvi</sup>

Numerous peer-reviewed studies confirm the negative impacts of mercury added SLPs on human health. Moreover, the World Health Organization has recognized that mercury is a "major public health concern,"<sup>xxvii</sup> and has outlined its concerns about SLPs in a fact sheet.<sup>xxviii</sup>



An adult's use of SLPs containing mercury can also expose other family members, such as through close contact,<sup>xxix</sup> and may even require decontamination of the home.<sup>xxx</sup>

Multiple states have warned of exposure risks to high mercury SLPs. Gordon Vrdoljak, Ph.D., of the California Department of Public Health, says about the use of mercury-laden skin-lightening creams: *"If people are using the product quite regularly, their hands will exude it, it will get in their food, on their countertops, on the sheets their kids sleep on."*<sup>xxxi</sup>

Symptoms associated with SLP exposure are not unique to mercury, so it may be difficult to diagnose the source without identifying SLPs as a possible cause, and then testing suspect products.<sup>xxxii</sup> Persons who apply these SLPs have observed elevated mercury levels in their urine. Once the exposure source was identified and SLP use stopped, kidney functions gradually returned to normal. Unfortunately, users are often not likely to be seen by a doctor before a more serious disease develops.<sup>xxxiii</sup>

## 4 Background

### 4.1 FDA regulations and warnings

The U.S. Food & Drug Administration (FDA) is charged with enforcing a 1 part per million (ppm) regulatory limit for mercury in most cosmetics, including SLPs.<sup>xxxiv</sup> FDA has extensive authority to investigate, regulate and warn consumers about mercury-added SLPs. This includes FDA authority<sup>xxxv</sup> to issue import alerts, which permit federal agents to detain these products at the border. According to FDA:

*The toxicity of mercury compounds has been extensively documented. In accordance with 21 CFR 700.13 (FR, Vol. 38 No. 3, January 5, 1973, pgs. 853-854), effective July 5, 1973, except for those cosmetics meeting the conditions of 21 CFR 700.13(d)(2)(i) or (d)(2)(ii), any cosmetic product containing mercury as an ingredient is deemed adulterated and subject to regulatory action.*<sup>xxxvi</sup>

SLPs are generally considered to be “unapproved new drugs,” according to FDA, with companies engaged in selling or distributing SLPs subject to sanctions:

*Sellers and distributors who market mercury-containing skin whitening or lightening creams in the U.S. may be subject to enforcement action, including seizure of products, injunctions, and, in some situations, criminal prosecution.*<sup>xxxvii</sup>

The 2020 CARES Act highlighted the need to address “unapproved new drugs” such as skin bleaching and lightening products because they are “intended to affect the structure or any function of the body.”<sup>xxxviii</sup> In April of 2022, FDA sent warning letters to 12 companies selling over-the-counter (OTC) skin lightening products containing hydroquinone that do not meet the requirements to be legally sold as OTC drugs.<sup>xxxix</sup>

OTC SLPs containing hydroquinone are considered unapproved drugs and are not generally recognized as safe, according to FDA:<sup>xl</sup>

*Dark Spot Fix drug product is an unapproved new drug introduced or delivered for introduction into interstate commerce in violation of section 505(a) of the Federal Food Drug & Cosmetic Act (FD&C Act), 21 U.S.C. 355(a), and is misbranded under section 502(ee) of the FD&C Act, 21 U.S.C. 352(ee). Introduction or delivery for introduction of such a product into interstate commerce is prohibited under sections 301(d) and (a) of the FD&C Act, 21 U.S.C. 331(d) and (a).*<sup>xli</sup>

The FDA letter goes on to state that:

*Dark Spot Fix is a drug as defined by section 201(g)(1)(B) of the FD&C Act, 21 U.S.C. 321(g)(1)(B), because it is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease and/or under section 201(g)(1)(C) of the FD&C Act, 21 U.S.C. 321(g)(1)(C), because it is intended to affect the structure or any function of the body. Specifically, this product is intended for use as a skin bleaching product.*<sup>xlii</sup>

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In August, FDA sent warning letters to three companies for introducing mole and skin tag removal products into interstate commerce that are unapproved new drugs, in violation of the FD&C Act.<sup>xliii</sup> According to FDA, there are no approved OTC drug products for the removal of moles and skin tags:

*It is the FDA's duty to protect public health from harmful products not approved for the U.S. marketplace" said Donald D. Ashley, J.D., director of the Office of Compliance in the FDA's Center for Drug Evaluation and Research."... This includes where online retailers like Amazon are involved in the interstate sale of unapproved drug products. We will continue to work diligently to ensure that online retailers do not sell products that violate federal law."*<sup>xliv</sup>

FDA has posted warnings to consumers that cosmetics with added mercury are being sold,<sup>xlv</sup> including establishing a new initiative in the Office of Minority Health to educate consumers about SLP risks.<sup>xlvi</sup> However, FDA has yet to take effective action against online perpetrators even when provided with evidence of illegal high mercury SLP sales in the U.S.

However, that may soon change. In a FY 2021 U.S. House of Representatives appropriation bill, a subcommittee *"...expressed concerns about the availability of illegal skin lightening products containing dangerous levels of mercury and hydroquinone that are available to consumers, particularly through online retailers."*<sup>xlvii</sup> In the FY 2022 appropriation bill, FDA was charged with reporting back to Congress on, among others things, the need to *"...enforce the physical inspection process."*<sup>xlviii</sup>

## **4.2 California Proposition 65, Sherman law and court decisions**

Our previous studies, along with others, have confirmed that skin lightening products (SLPs) spiked with mercury are being sold in violation of federal regulations, California's Sherman Law, as well as California's Proposition 65 consumer warning requirements. Mercury and mercury compounds are on the Proposition 65 list because they can cause birth defects or other reproductive harm.<sup>xlix</sup>

Amazon and other online platforms actively invite individuals and companies from all over the world to place products on their marketplace without taking adequate steps to ensure those products are safe and lawful, often resulting in allowing sellers to avoid health and safety compliance.<sup>l</sup>

SLPs containing mercury are considered so toxic that they must be disposed of as a hazardous waste<sup>li</sup> in California. Use can also result in contamination<sup>lii</sup> of household air and personal items. Various other state health departments have also warned of exposure risks to SLPs.

In a case designed to hold it responsible, Amazon was sued in 2014 by Mr. Larry Lee,<sup>liii</sup> and again in 2019 by *As You Sow*, under California's Toxic Enforcement Act.<sup>liv</sup> For the 2019 lawsuit, MPP provided lab test results of SLPs purchased from Amazon.com, and along with Black Women for Wellness, provided an amicus brief in support of the case, as did the California



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Attorney General. The lawsuits alleged that Amazon knowingly exposed consumers to mercury by allowing SLPs with mercury concentrations at thousands of times the legal limit set by FDA without providing the warning required by California’s Proposition 65.

The 2014 lawsuit brought by Larry Lee, filed in Alameda County, concerned five SLPs sold on Amazon.com which contained mercury at levels far beyond the maximum allowed by federal law. Mr. Lee claimed Amazon knowingly and intentionally listed on its website numerous skin lightening creams that had levels of mercury far beyond what was safe, and well in excess of the minimum threshold triggering a warning of exposure to reproductive toxicants under Proposition 65, while failing to provide statutorily required warnings.<sup>lv</sup>

Amazon’s primary defense was that it doesn’t have any obligation to comply with the law even if Amazon knows the products are dangerous. Rather, Amazon stated that health and safety compliance of products sold on its site should be handled by each of the individual entities from all over the world — no matter how small and no matter whether they are familiar with U.S. laws—that use its online marketplace. Amazon also argued that because it is an online platform, it should bear no responsibility for any harm to consumers from the mercury-added products sold on its virtual shelves. It also maintained that it was not sure what it was selling on its website.

The trial judge agreed with Amazon and dismissed the Lee lawsuit in 2019, citing a federal law that protects websites from liability for the content of products posted by others and their suits—the Communications Decency Act. Further, the court held that Mr. Lee failed to prove that all the products contained mercury, or that there were any resulting exposures.<sup>lvi</sup>

However, California’s First District Court of Appeal reversed the trial judge ruling on March 11, 2022.<sup>lvii</sup> The Court held that Amazon must comply with consumer protection laws, including warning California consumers when products sold on its marketplace contain chemicals listed by California as carcinogens or reproductive toxicants. In its ruling, the Court stated that Amazon does not act as a mere forum for retailers, but plays an active role in selling their products, and can be held accountable for failing to disclose their known dangers.

Subsequently, on June 15, 2022, the California Supreme Court declined Amazon’s request to review the First District Court of Appeal’s decision. It ruled that Amazon must warn consumers when selling products that contain chemicals listed by California as carcinogens or reproductive toxicants. This is the first time a court has allowed consumers to sue because of the platform’s failure to post proper warnings.

### 4.3 Previous investigations

Each of our prior investigations confirmed that a number of SLPs purchased from Amazon.com contain high levels of mercury. In the SLPs tested during our 2018 investigation, mercury concentrations over 1 ppm ranged from 9.1 ppm to 30,000 ppm and in 2019 they ranged from 1,600 ppm to 26,000 ppm as shown in Annex I and II.

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MPP’s testing was part of a broader worldwide investigation originally initiated by ZMWG<sup>lviii</sup> in 2017. In 2017-2018 ZMWG tested the mercury content of 338 SLPs purchased in 22 different countries, including the United States. SLPs targeted were well-known brands identified via questionnaires, mainly purchased from physical shops (i.e., not -commerce. 34 of those products (10% of the total) had mercury concentrations above 1 ppm.

On August 17, 2018, MPP met with FDA and apprised the agency of the test results. MPP subsequently received an email on Sept.13, 2018, from FDA with a request for:

*“...information on a number of skin cream/whitening products identified by various governments with unpermitted levels of mercury, which you found advertised for sale on places such as Amazon and eBay.”<sup>lix</sup>*

In MPP’s September 2018 response to FDA’s request for information, test data was provided on a number of SLPs purchased via Amazon.com with high mercury concentrations. Fourteen (14) SLPs purchased from Amazon had mercury concentrations over 1 ppm.<sup>lx</sup> Most of these had been previously identified by various government agencies as having excessive levels of mercury.<sup>lxi</sup>

After receiving the data, FDA followed up with its own testing and presented the results on its website, confirming the mercury content of the tested SLPs as shown in Table 1.<sup>lxii</sup>

**Table 1: Skin Products Found to Contain Mercury, FDA, 2019**

Product name and image	Lab results - Mercury (Hg) content
Kim Whitening Pearl and Snowlotus Cream	47 ppm
Golden Pearl Beauty Cream	12,000 ppm
Chandni Whitening Cream	8,790 ppm
Goree Beauty Cream	17,200 ppm
Sandal Whitening Beauty Cream	13,100 ppm
Monespa Express Peeling	5,030 ppm
Face Fresh Beauty Cream	18,500 ppm
Content current as of: 09/26/2019	

A 2019 ZMWG study targeted many of the high-mercury SLPs from the 2017-2018 study, as well as other high-mercury SLPs identified by governments or researchers. This time E-commerce platforms were primarily targeted, although a few products were bought in physical shops. Of the 166 samples analyzed in 2019, 93 SLPs (56%) were found to have mercury concentrations above 1 ppm. The results of the analysis of SLPs purchased on Amazon.com in the U.S. by MPP are presented in Annex II.

In 2022, FDA added additional high mercury SLPs to its list as shown in Table 2.<sup>lxiii</sup>

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**Table 2: Skin Products Found to Contain Mercury, FDA, 2022**

<b>Product name and image</b>	<b>Lab results - Mercury (Hg) content</b>
CCM Special Cream Tumeric	8,088 ppm
CCM Perfect 365 White Cream	4,322 ppm
Be Be Special Cream CCM/Yellow	8,909 ppm
Be Be Special Cream	3,110 ppm
La Tia Mana Crema Limpiadora	5,432 ppm
Ling Zhi BB Whitening Cream	1,393 ppm
MSII Whitening Peeling	1,581 ppm
MSII Express Peeling	5,797 ppm
Collagen Plus - Vit E Cream, Night Cream	3,670 ppm
Aneeza Gold Beauty Face Cream	12,400 ppm
HIYADY Glutathione Cream White & Bright	15,900 ppm
Content current as of: 01/25/2023	

Aside from this posting, however, FDA did not appear to take further action on mercury-added SLPs other than issuing “import alerts” for specific products and posting public awareness notices and providing a form to report websites selling illegal SLPs among other products.<sup>lxiv</sup>

Our March 2022 report<sup>lxv</sup> tested SLPs offered by over 40 online platforms, bought in 17 countries by our partner NGOs, and confirmed yet again that high-mercury SLPs are widely available. Of the 271 SLPs tested, 129 were found to have mercury levels over 1 ppm. Our 2020-2022 investigation also included 13 months of periodic monitoring of E-commerce platforms in 15 countries to assess the ongoing availability of the high-mercury SLPs identified.

#### **4.4 Prior assurances from Amazon**

While Amazon has policies in place to restrict the sale of hazardous and illegal products, our past investigations and testing confirmed Amazon’s failure to adequately implement these policies. Amazon’s policies state: *“Products offered for sale on Amazon must comply with all laws and regulations and with Amazon’s policies. The sale of illegal, unsafe, or other restricted products listed on these pages ... is strictly prohibited.”*<sup>lxvi</sup>

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During the 2019 court deposition related to Proposition 65 violations discussed earlier, David Kosnoff, Amazon’s Director of Worldwide Product Compliance Safety, confirmed that Amazon’s product compliance and safety team reviews the EU’s RAPEX regularly and takes action in response to its listings including, at times, in countries not directly targeted by the RAPEX announcement.

According to Mr. Kosnoff, Amazon’s Product Compliance and Safety Team consists of 47 people whose mission it is to *“ensure the safety of products sold on Amazon sites worldwide...through taking actions based on customer reviews, regulatory notices, investigations that [they] will kick off on [their] own...”* and that Amazon has *“...been developing processes recently to screen global websites or the global Amazon sites for products that are recalled in individual markets.”* Mr. Kosnoff also testified that Amazon knows that *“skin lightening creams containing mercury”* are *“products”* that the Food & Drug Administration has determined present an *“unreasonable risk of injury or illness, or are otherwise unsafe,”* which subjects skin lightening creams containing mercury to Amazon’s *“restricted products rule.”*<sup>lxvii</sup>

Following publication of the 2019 ZMWG study, Amazon was asked to and removed the SLPs in question. The Wall Street Journal reported that Amazon.com Inc. had removed mercury-added skin lightening creams from its U.K. and U.S. websites.<sup>lxviii</sup> In the WSJ article, Amazon UK stated: *“All marketplace sellers must follow our selling guidelines and those who don’t will be subject to action, including potential removal of their account. The products in question are no longer available.”*<sup>lxix</sup>

Indicative of the lack of consistency, however, Amazon India claimed that responsibility for sales on its marketplace rests solely with the third-party seller:

*The products offered for sale on the Marketplace are always owned and/or sold by the seller at any point of time (and not by Amazon.) Each and every seller owns the products and independently offers them for sale on the Marketplace in their own*



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*right...The sellers are themselves responsible for ensuring all compliance under applicable laws.*<sup>lxx</sup>

Furthermore, a Reuters review in mid-2020 showed at least 19 listings of the high-mercury products on different country sites of seven e-commerce platforms, including Amazon. After Reuters raised the issue, Amazon removed most of the identified SLPs, or promised to do so.<sup>lxxi</sup> However, Amazon subsequently continued to facilitate the marketing of unpermitted products on its websites.<sup>lxxii</sup>

On May 6, 2021, Amazon wrote the U.S. Consumer Product Safety Commission (CPSC),<sup>lxxiii</sup> asking that they consider instituting a product safety pledge for E-commerce websites similar to that established by the European Commission (EC) and Australia, in which Amazon participates. According to Amazon:

*"This Pledge would establish a new standard that raises the bar on safety and will provide all customers a safer shopping experience. By joining this Pledge, companies are making a public commitment to CPSC, and American consumers, that they will work with the CPSC to ensure effective communication of safety hazards and issue prompt recalls of defective products."*

Finally, in response to the June 2022 California Supreme Court ruling that consumers must be warned of the possible availability of SLPs with high mercury concentrations, Amazon once again affirmed that it has a policy in place for not allowing sales of skin care products that contain mercury. A spokesperson for Amazon said SLPs "have long since been removed" from the company website:

*"Safety is a top priority at Amazon, and we want customers to shop with confidence in our stores. We require that all products comply with applicable laws and regulations, and we have proactive measures in place to prevent suspicious or noncompliant products from being listed and we monitor the products sold in our stores for product safety concerns."*<sup>lxxiv</sup>

## 5 Methodology

During the summer and into the fall of 2022, MPP again purchased suspect SLPs from Amazon.com in coordination with the ongoing work of the ZMWG on skin-lightening products. In preparation for the study, an initial list of SLPs known to be potentially "high-mercury" SLPs was compiled from various online sources, followed by an intensive search of Amazon.com. Some of these SLPs had previously been identified by government websites, academic research and civil society. The U.S. websites included FDA, state and local governments such as the following:

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- The Minnesota Department of Health website warns state residents to stop using some types of skin lightening products, after testing revealed that they may contain dangerous levels of mercury.<sup>lxxv</sup>



*Examples of skin-lightening products that contain mercury, hydroquinone or steroids.*

*Image credit: Minnesota Department of Health*

- The California Department of Public Health has tested products that may contain mercury<sup>lxxvi</sup> and along with California counties posted results on their websites.<sup>lxxvii</sup>
- The New York City Health Department website also warns residents of possible mercury poisoning from skin-lightening creams. In 2018 they warned residents about 10 SLPs.<sup>lxxviii</sup>



- |  |  |
|--|--|
| • Due Beauty Cream made by Kreative Cosmetics (Pvt) Ltd.           | • Faiza Beauty Cream made by Poonia Brothers (Pak)   |
| • Sandal Whitening Beauty Cream made by MMC Cosmetics * - Pakistan | • Seven Herbal Ubtan Cream made by C.P.H.L.  |
| • Chandni Whitening Cream made by SJ Enterprises Pakistan          | • Stillman's Freckle Cream and Stillman's Skin Bleach Cream made in Pakistan under license from the Stillman Company Inc., USA |
| • Golden Pearl Beauty Cream made by Golden Pearl Cosmetics         | • Niuma Medicated Antiseptic Soap made by Niuma Belleza, Spain   |
| • Face Fresh Beauty Cream made by Shaheen Cosmetics Pakistan       | • Niuma Lemon Medicated Germicidal Soap made by Niuma Belleza, Spain   |
| • Faiza No 1 Beauty Cream made by A.M. Cosmetics (Pak)             |  |

The suspect SLPs were sent to Legend Technical Services Laboratory in St. Paul, Minnesota for testing. The mercury concentration of each product was determined by laboratory based Inductively Coupled Plasma Optical Emission Spectroscopy (ICP-OES) analysis.

Amidst the third-party sellers, one located on Long Island<sup>lxxix</sup> advertised some of the suspect SLPs that the Minnesota, California and New York City<sup>lxxx</sup> health departments and California counties warned consumers about as depicted in following image from their website:

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## 6 Test results/analysis

Our findings confirm that high-mercury SLPs remain available from Amazon.com. As presented in Table 3, twenty-one (21) suspect SLPs were purchased from Amazon.com, and nineteen (19) of those were found to have mercury concentrations over 1 ppm, the legal limit. The levels of mercury detected by the lab ranged from 1.5 ppm to 8,500 ppm.

**Table 3 – Mercury-based skin lighteners purchased from Amazon, 2022**

Product name	Hg (ppm)	Country/producer	Product photo	Exemplars*	Hazard Alert
Nunn care	1500	Mexico/ Miligros Cosmetics		<a href="#">Nunn Care, 1 Ounce (Pack of 1)</a> ASIN: B096TKM6GX	States of California, Minnesota
Kojie San	7.0	Philippines / Marketasia		<a href="#">Kojie San Dream White Anti-Aging Skin Care (Dream White Face Cream)</a> ASIN: B008J3A9GA	Sacramento County, CA
Jalea Real Grisi	3.9	Mexico/ FACTOR INT'L. / GRISI HNOS.		<a href="#">GRISI Grisi Royal Jelly Cream, 3.8 ounces (Pack of 4)</a> ASIN: B08J994BG3	Sacramento County, CA



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<b>Clear N Smooth</b>	6.6	USA/ Hawknad Specialty Products		<a href="#">Clear-n-smooth Plus Cream 4 Oz</a> ASIN: B00927VD0S	
<b>Crusader</b>	16	Spain		<a href="#">CRUSADER Skin Lightening Cream Regular Formula 1.76 oz</a> ASIN: B000142P1W	EU RAPEX
<b>Glutinone</b>	160	Korea		<a href="#">HIYADY Cream (Pink) Enriched with Hyaluron-glutathione extract</a> ASIN: B07QYJ8DBY	State of Minnesota, US FDA
<b>Promina</b>	16	Thailand		<a href="#">3 X Promina Ginseng Pure Pearl Face Cream Removal Freckle &amp; Acne Dark Spot</a> ASIN: B009JCUGHW	State of Minnesota
<b>African formula</b>	9.7	Spain		<a href="#">African Formula Skin Tone Creme 1.76 oz.</a> ASIN: B000142P1W	
<b>Carotone</b>	1.9	Côte d'Ivoire		<a href="#">Carotone B.S.C Cream</a> ASIN: B0B3824MB3	EU RAPEX, US FDA
<b>Faiza</b>	7,000	Pakistan/ Poonia Brothers		<a href="#">fair n pink Faiza Beauty Cream (Pink, 50 g)</a> ASIN : B081TBPC35	NYC Dept of Health; EU RAPEX
<b>Faiza</b>	7,400	Pakistan/ Poonia Brothers		<a href="#">fair n pink Faiza Beauty Cream (Pink, 50 g)</a> ASIN: B081TBPC35	NYC Dept of Health/ EU RAPEX
<b>Yoko Whitening</b>	1.5	Thailand		<a href="#">YOKO Whitening Spa Salt For Armpit &amp; Bikini Area 220g. White</a> ASIN : B00VOUJWD6	State of Minnesota
<b>Snow Lotus</b>	19	Thailand		<a href="#">KOK Liang Snow Lotus Cream Fast Treatment Repair Damage Skin 50g Made in Thailand</a> <b>ASIN:</b> B008DR051Q	State of California
<b>San ing Face Cream</b>	7.8	Taiwan or China		<a href="#">Pearl Cream , San Ing Face Cream , Value 2 Pak ( 2 X 0.3 Oz ) by scthkido</a> ASIN: B018IVNLHQ	State of California
<b>Dodo White Up</b>	2.1	United Kingdom		<a href="#">Dodo Beauty Lightening Lotion</a> ASIN : B01LXXFK8F	Ghana FDA



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<b>Sakura</b>	0.66	Thailand		<a href="#">Sakura White DJ White Gluta speed White UVA UVB SPF 50 PA ++ 15 g. Silk Sunscreen (1 box)</a> ASIN : B07H8KC9RG	State of California, Sacramento County, CA
<b>Immediat Claire</b>	4.5	Ghana, Ghandour Cosmetics Ltd.,		<a href="#">Immediat Claire Maxi-Beauty Lightening Body Cream With Carrot Extract 250 ml - 8m4</a> ASIN : B09FHMMZ6K	
<b>Nunn Care</b>	6.8	Mexico/ Miligros Cosmetics		<a href="#">Nunn Care, 1 Ounce (Pack of 1)</a> ASIN : B096TKM6GX	States of California, Minnesota
<b>Faiza</b>	8,400	Pakistan/ Poonia Brothers		<a href="#">fair n pink Faiza Beauty Cream (Pink, 50 g)</a> ASIN: B081TBPC35	NYC Dept of Health/ EU RAPEX
<b>Faiza</b>	8,500	Pakistan/ Poonia Brothers		<a href="#">fair n pink Faiza Beauty Cream (Pink, 50 g)</a> ASIN: B081TBPC35	NYC Dept of Health/ EU RAPEX
<b>Dermaline</b>	0.79	USA, Neovema LLC		<a href="#">Dermaline - Cocoa Butter Body Cream with Jojoba Oil, Collagen and Vitamin E 2 Oz.</a> ASIN : B08W8MM5T5	
<b>*The listed exemplars are provided to assist in identification only using Amazon Standard Identification Numbers (ASIN). An ASIN is an internal, unique alphanumeric code that corresponds to products listed on the Amazon platform. A third-party seller obtains an ASIN by creating a new listing through a portal called "Seller Central." Amazon does not prevent third-party sellers from selling the same SLP under multiple ASINs.</b>					

Mercury was not listed in the ingredient lists of any SLPs tested. Duplicate SLPs were purchased to "...account for the variability between units resulting from uneven distribution of mercury compounds within a batch or between batches as the literature on mercury testified."<sup>lxxxix</sup> According to experts, such testing would help to determine such variables as the amount of the substances added and the presence of a contaminant, such as mercury.<sup>lxxxii</sup>

Shown below is an Amazon.com advertisement for "Fair n Pink Faiza Beauty Cream."<sup>lxxxiii</sup>

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Two of the "Faiza" SLPs purchased from Amazon arrived with unsealed lids, so two more "Faiza" products were purchased and lab tested to determine if the unsealed SLPs had emitted mercury vapors prior to being lab tested. The packaging in the photo below indicates that in 2013 the "Faiza" product had received awards in Pakistan and was "authenticated" by "Pakistani Standards."<sup>lxxxiv</sup>

However, Faiza Beauty Cream has been called a major health hazard by Pakistani Standards and Quality Control Authority (PSQCA) as they contain "mercury, hydroquinone, and steroids."<sup>lxxxv</sup> According to news reports, in 2018 PSQCA sent warning notices, which have been ignored by the M/s Poonia Brothers. Poonia Brothers maintains that the hazardous products are counterfeits, and on its website instructs consumers: "Do buy Faiza Beauty Cream with code 223190 from Poonia Brothers,"<sup>lxxxvi</sup> and even warns of the side effects of the counterfeits.<sup>lxxxvii</sup> However, testing of the cream in the photo below confirmed that the product with code 223190 in fact contained extremely high mercury concentrations.

For nearly a decade, Faiza Beauty Cream has been identified as hazardous due to high mercury levels by governments around the world, including the United Arab Emirates,<sup>lxxxviii</sup> the United Kingdom,<sup>lxxxix</sup> the EU RAPEX<sup>xc</sup> and the New York City Health Department,<sup>xc</sup> among others. In addition, Faiza was the subject of a prior California court hearing involving Amazon. According to the court proceedings, David Kosnoff, Amazon's Director of Worldwide Product Compliance Safety, said that he was aware of this brand being previously identified by the EU's RAPEX in 2013 as containing high mercury levels and that Amazon would have been aware of the listing.<sup>xcii</sup>

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After Amazon received notification in 2015 via the EU’s RAPEX of Faiza’s high mercury content, third-party seller “Freeway Life” sold 17 units of Faiza through Amazon.com without the Proposition 65 warning.<sup>xciii</sup> In a subsequent court filing, Amazon stated that it had removed the Faiza product from its website in October 2015.<sup>xciv</sup> Nevertheless, as shown in Table 3, Faiza products were again offered for sale by Amazon.com, they were purchased in the latter part of 2022, lab tested and found to contain mercury concentrations exceeding 7,000 ppm.

In addition, a screenshot of one of the four Faiza products purchased on Amazon is shown in the first image in Annex 3, without any evident warnings. However, in California, the same Faiza product did exhibit a Proposition 65 warning, as shown in the second screenshot.

## 7 Conclusions

All told, our studies and others clearly show that online platforms offer mercury-added SLPs to a vast and often unsuspecting consumer market, and are not deterred by regulations. Their lack of accountability, labelling and warnings make it difficult to detect and avoid hazardous products. Moreover, in cases where the third-party seller on the platform is located outside the country where the product is purchased, the online platform is typically the only option for a consumer seeking legal redress for injuries incurred from using an unsafe product. The same may be true for regulatory agencies enforcing consumer, health and safety laws, regulations and policies.

In effect, Amazon appears to have created a black market where SLPs contaminated with mercury are being sold. By actively inviting sellers across the globe to place products on the online marketplace without effective periodic monitoring to ensure those products are safe and lawful, this business model allows products to often bypass health and safety regulations and guidelines.<sup>xcv</sup>

The health and safety risks allowed by online platforms have been well documented, and extend well beyond mercury-added SLPs. This lack of incentive for platforms to ensure product safety results in merely voluntary episodic efforts to remove illegal SLPs. Consequently, policymakers and the courts are increasingly challenging the legal framework where consumers are not well protected.

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MPP’s latest investigation of suspect SLPs offered for sale by Amazon confirmed yet again that high-mercury SLPs are still widely available, and that Amazon is still not sufficiently motivated to identify and take down illegal SLPs sold over its platform. Amazon and other E-platforms, could, by being more vigilant, by consulting government, academic and civil society websites, and by due diligence in enforcing their own policies, better protect consumers from the health risks associated with SLPs.

SLP sales that are prohibited in stores should also be prohibited online. The platforms may attract customers to their sites, profit from each sale, dictate the terms of the transactions, control the website, influence the price, and often distribute the products. Therefore, platforms should bear the legal responsibility for ensuring that products fully comply with health and safety laws.

With the 2020 CARES Act, there is additional regulatory authority for the US FDA to issue warning letters to Amazon to stop marketing SLPs known to contain over 1 ppm mercury. In addition, the recently passed 2022 Modernization of the Cosmetic Regulation Act provides FDA with more regulatory tools, including requiring manufacturers to report “serious adverse events” and cosmetics ingredients and if products are unsafe, to conduct mandatory recalls.<sup>xcvi</sup>

Given FDA’s recent activities to combat other risky SLPs, it would be a dereliction of duty were FDA not also to target illegal mercury added SLPs which, according to recent warnings from FDA, are placing consumers at serious risk from this dangerous neurotoxin. In addition, given the FY 2021 and 2022 appropriations of 5.7 million dollars,<sup>xcvii</sup> FDA has additional resources to not only commit to routine SLP testing, but to regularly post test results, place photos of illegal SLPs prominently on its website and draw further attention by issuing press releases on import alerts.

## 8 Recommendations

While recommendations included in earlier ZMWG reports should also be considered, this report specifically recommends the following:

- I. The Conference of the Parties should consider amending the Minamata Convention to ban SLP sales, and offering of sales of SLPs with mercury levels over 1 ppm.
- II. The US FDA should take steps to eliminate online sales of mercury-added SLPs, similar to recent actions it has taken to curtail online sales of certain SLPs containing hydroquinone.
- III. Any policies, agreements or settlements with E-commerce platforms shouldn’t be any weaker than what has been agreed to elsewhere (e.g., in Europe etc.)
- IV. Other recommendations for E-commerce platforms include the following:



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1. Third party sales of skin lightening products should be eliminated entirely if counterfeit marketing can't be prevented, since toxic skin lightening sales affects this entire category.
2. Develop a means to test and ensure compliance with mercury laws when marketing SLPs.
3. Commit to regularly monitor government websites and detention lists, the ZMWG database and others, and remove suspect SLPs.
4. Use filtering mechanisms aimed at preventing new listings offering the same items as those previously removed and implement a penalty point system for repeat offenders.
5. Sellers should be informed when products are taken down and their products flagged.
6. All safety concerns notified by consumers via customer service channels should automatically trigger an internal investigation and, where appropriate, the products should be removed.
7. Procedures should be implemented that allow consumers to signal product safety concerns directly, and when suspect SLPs are identified, platforms should respond with product removals within two days, reaction to notifications within five days, etc.
8. Measures should be taken to prevent banned SLPs from being searchable and/or purchasable again by consumers, even if the products are re-listed on the platform.
9. Platforms should commit to report regularly on measures taken to ensure effective communication of safety hazards and issue prompt recalls of defective products, as required by the European Product Safety Pledge.

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## Annex I

Mercury-added skin lighteners purchased by the Mercury Policy Project from Amazon.com, 2018

Product name	Hg content (ppm)	Origin	Product photo	Similar product remains for sale in November 2018*
<b>Chandni Whitening Cream</b>	11,000	Made in Pakistan, sent from Vietnam seller		<a href="https://www.amazon.com/Chandni-Whitening-Cream/dp/B074MGFGMF/">https://www.amazon.com/Chandni-Whitening-Cream/dp/B074MGFGMF/</a>
<b>Goree Beauty Cream</b>	18,000	Sent from Sri Lankan seller		<a href="https://www.amazon.com/Goree-Spot-Removing-Beauty-Cream/dp/B07GXLH65L/">https://www.amazon.com/Goree-Spot-Removing-Beauty-Cream/dp/B07GXLH65L/</a>
<b>Goree Day and Night Whitening Cream</b>	19,000	Sent from Sri Lankan seller		<a href="https://www.amazon.com/Night-Whitening-Beauty-Cream-Effects/dp/B071F5W3Q6">https://www.amazon.com/Night-Whitening-Beauty-Cream-Effects/dp/B071F5W3Q6</a>
<b>Kim Whitening Ginseng and Pearl Cream</b>	3,500	Sent from U.S. seller.		<a href="https://www.amazon.com/Ginseng-Pearl-Latina-Smoother-Cream/dp/B01DL2O7H0/">https://www.amazon.com/Ginseng-Pearl-Latina-Smoother-Cream/dp/B01DL2O7H0/</a>
<b>Kim Whitening Pearl &amp; Snow Lotus Cream</b>	9,900	Sent from U.S. seller.		<a href="https://www.amazon.com/White-ning-Pearl-Lotus-Latinal-Smoother/dp/B00CMIZC88/">https://www.amazon.com/White-ning-Pearl-Lotus-Latinal-Smoother/dp/B00CMIZC88/</a>
<b>White Rose Whitening Cream</b>	8,100	Thailand		<a href="https://www.amazon.com/White-ning-Reduce-Melasma-Blemishes-Fragrance/dp/B07217H65N">https://www.amazon.com/White-ning-Reduce-Melasma-Blemishes-Fragrance/dp/B07217H65N</a>
<b>Kim Whitening Ginseng and Pearl Cream</b>	2,100	Sent from U.S. seller		<a href="https://www.amazon.com/Ginseng-Pearl-Latina-Smoother-Cream/dp/B01DL2O7H0/">https://www.amazon.com/Ginseng-Pearl-Latina-Smoother-Cream/dp/B01DL2O7H0/</a> and <a href="https://www.amazon.com/White-ning-Ginseng-Latinal-Smoother-Salamander99/dp/B00N526M70/">https://www.amazon.com/White-ning-Ginseng-Latinal-Smoother-Salamander99/dp/B00N526M70/</a>
<b>Sandal Whitening Beauty Cream</b>	11,000	Made in Pakistan, listed China, also UK seller		<a href="https://www.amazon.com/100-original-Sandal-Whitening-Beauty/dp/B079R5XFT1">https://www.amazon.com/100-original-Sandal-Whitening-Beauty/dp/B079R5XFT1</a>
<b>Aneeza Gold Beauty Cream</b>	30,000	Made in India, Texas-based seller		<a href="https://www.amazon.com/Aneeza-Gold-Beauty-Cream-Avocado/dp/B079FY4YZ7/">https://www.amazon.com/Aneeza-Gold-Beauty-Cream-Avocado/dp/B079FY4YZ7/</a>

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Product name	Hg content (ppm)	Origin	Product photo	Similar product remains for sale in November 2018*
<b>Parley Herbal Whitening Cream</b>	9.1	Made in Pakistan		<a href="https://www.amazon.com/Parley-Herbal-Whitening-Cream-Natural/dp/B019C5HKW4/">https://www.amazon.com/Parley-Herbal-Whitening-Cream-Natural/dp/B019C5HKW4/</a>
<b>Parley Cream</b>	17,000	Made in Pakistan		<a href="https://www.amazon.com/Parley-Nomarks-Anti-marks-Extracts-Whitening/dp/B018R7RBZ4/">https://www.amazon.com/Parley-Nomarks-Anti-marks-Extracts-Whitening/dp/B018R7RBZ4/</a>
<b>Sandal Whitening Beauty Cream</b>	12,000	Made in Pakistan, listed China, UK seller		<a href="https://www.amazon.com/100-original-Sandal-Whitening-Beauty/dp/B079R5XFT1/">https://www.amazon.com/100-original-Sandal-Whitening-Beauty/dp/B079R5XFT1/</a>
<b>Stillman's Skin Bleach Cream</b>	7.5	India seller		<a href="https://www.amazon.com/Stillmans-Skin-Bleach-Cream-Original/dp/B0716F667N/">https://www.amazon.com/Stillmans-Skin-Bleach-Cream-Original/dp/B0716F667N/</a>
<b>Face Fresh</b>	11,000	Made in Pakistan, Jamaica and U.S. sellers		<a href="https://www.amazon.com/FFBC-FACE-FRESH-WHITENING-BEAUTY/dp/B07FJWW4BM/">https://www.amazon.com/FFBC-FACE-FRESH-WHITENING-BEAUTY/dp/B07FJWW4BM/</a>

\* URLs are for products with the same name and packaging photo listed for sale on Amazon on 12 November 2018.

Mercury content analyzed by Enthalpy Analytical Laboratories (Berkeley, California) using Cold Vapor Atomic Absorption Spectroscopy.

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## Annex II

Mercury-added skin lighteners purchased by the Mercury Policy Project from Amazon.com, 2019

Brand	Country of origin, according to the packaging	E-commerce platform	Mercury concentration, as determined by Cold Vapor Atomic Absorption Spectroscopy (ppm)
Kim Whitening Pearl and Snow Lotus Cream	Thailand	Amazon USA	1,600
Makako Soap	Italy	Amazon USA	0.04
POP Popular Facial Cream Whitening Acne Pimple	Thailand	Amazon USA	0.05
Goree Whitening Beauty Anti-ageing Spots Pimples Removing Cream	Pakistan	Amazon USA	25,000
Chandni Whitening Cream	Pakistan	Amazon USA	40,00
Whitening Ginseng and Pearl Cream	Thailand	Amazon USA	8,700
Whitening Ginseng and Pearl Cream	Thailand	Amazon USA	8,600
Chandni Whitening Cream	Pakistan	Amazon USA	22,000
Goree Whitening Beauty Anti-ageing Spots Pimples Removing Cream	Pakistan	Amazon USA	26,000
Kim Whitening Pearl and Snow Lotus Cream	Thailand	Amazon USA	13,000



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## Annex III

Screen shots of Faiza Beauty Creams on Amazon.com

The screenshot shows the Amazon product page for 'fair n pink Faiza Beauty Cream (Pink, 50 g)'. The product is priced at \$23.99 (\$13.33 / Ounce) and has 6 ratings. It is a cream form, 1.8 Ounce unit count, and is used for the face. The product is described as 'Fair n pink Faiza Beauty Cream (30 g)' and is used to remove pimples, freckles, and blackness of the face. The product is also described as 'Fair n pink Faiza Beauty Cream (30 g)' and is used to remove pimples, freckles, and blackness of the face. The product is also described as 'Fair n pink Faiza Beauty Cream (30 g)' and is used to remove pimples, freckles, and blackness of the face.

**Purchased 3 times.**  
Last purchased Sep 10, 2022  
[View order](#)

**fair n pink Faiza Beauty Cream (Pink, 50 g)**  
Brand: fair n pink  
★ ★ ★ ★ ★ 6 ratings  
\$23.99 (\$13.33 / Ounce)  
Earn 5% back every day at Amazon with your Prime Store Card.  
Brand: fair n pink  
Item Form: Cream  
Unit Count: 1.8 Ounce  
Number of Items: 1  
Use for: Face

**About this item**

- Faiza Poonia Herbal Beauty Cream (30 g)
- To remove pimples, freckles and blackness of the face. Faiza Beauty Cream is used for spotless, beautiful and white color face. Within few days of usage, you will feel the difference.
- Faiza Beauty Cream is used for spotless, beautiful and white color face
- Within few days of usage, you will feel the difference
- Faiza Beauty Cream refines the natural freshness and beauty of the skin

**\$23.99** (\$13.33 / Ounce)  
FREE delivery January 23 - 25. Details  
Or fastest delivery Friday, January 20. Order within 15 hrs 19 mins. Details  
Deliver to Michael - Spring Hill 34607  
Only 19 left in stock - order soon.  
Qty: 1  
[Add to Cart](#)  
[Buy Now](#)  
Secure transaction  
Ships from: A-TO-Z PRIME  
Sold by: A-TO-Z PRIME  
Return policy: Eligible for Refund or Replacement  
[Add to List](#)

**prime** try before you buy  
1 item  
Subtotal \$79.50  
Total due today \$0.00  
Try free for 7 days  
[Go to Cart](#)  
\$79.50  
prime

The screenshot shows the Amazon product page for 'Beauty Cream (Pink, 50 g)'. The product is priced at \$23.99 (\$13.33 / Ounce) and has 5 ratings. It is a cream form, 1.8 Ounce unit count, and is used for the face. The product is described as 'Beauty Cream (Pink, 50 g)' and is used to remove pimples, freckles, and blackness of the face. The product is also described as 'Beauty Cream (Pink, 50 g)' and is used to remove pimples, freckles, and blackness of the face.

**Purchased 2 times.**  
Last purchased Nov 15  
[View order](#)

**Proposition 65 Warning for California Consumers**  
WARNING: This product can expose you to chemicals including Mercury and mercury compounds which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

**Beauty Cream (Pink, 50 g)**  
Brand: fair n pink  
★ ★ ★ ★ ★ 5 ratings  
\$23.99 (\$13.33 / Ounce)  
Earn 5% back on this purchase (worth \$1.20 when redeemed) with your Prime Store Card.  
Brand: Fair n pink  
Item Form: Cream  
Unit Count: 1.8 Ounce  
Number of Items: 1  
Use for: Face

**FREE delivery November 18 - 22. Details**  
Or fastest delivery November 17 - 18. Details  
Deliver to Jessica - Berkeley 94710  
Only 17 left in stock - order soon.  
Qty: 1  
[Add to Cart](#)  
[Buy Now](#)  
Secure transaction  
Ships from: MAKIN'Z STORE

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## Endnotes

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- xc <https://www1.nyc.gov/site/doh/health/health-topics/mercury-in-soaps-and-creams.page>
- xcii In January 2013, the European Commission, through RAPEX notified its member states and subscribers, including Amazon, that “Faiza No. 1 Beauty Cream” by “Poonia Brothers (Pak)” had been tested by the United Kingdom and contained 5,430 mg/kg of mercury. The RAPEX notification described the Faiza cream as “pink cardboard packaging containing whitening cream in a pink plastic pot with a purple lid.” A photograph accompanied the notification that matched this description, and RAPEX listed the country of origin for Faiza as Pakistan. Also in January 2013, RAPEX notified its members that a separate unit of “Faiza Beauty Cream” by “Poonia Brothers (Pak)” had been tested by a member state and contained 5,940 mg/kg of mercury.” A photograph accompanied the notification that matched this description, and RAPEX listed the country of origin as Pakistan. Court of Appeal of the State of California First Appellate District, Division Two ruling, Lee vs Amazon.com, A158275, March 11, 2022
- xciii Excerpts from Plaintiff As You Sow’s proposed decision against Amazon, Kosnoff Dep. 77:3-11; Jan 2019; (See Exhs. 98, 100, 180; see also Exh. 52, 122, Amazon’s sales spreadsheets.)
- xciv DEFENDANT AMAZON.COM, INC.’S OPPOSITION TO PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION, Case No. RG 14-738130, Page 8, August 16, 2016
- xcv <https://www.asyousow.org/press-releases/amazon-sued-mercury-skin-lightening-creams>
- xcvi <https://nypost.com/2023/01/26/ny-bans-cosmetics-with-deadly-mercury-amid-health-concerns/>
- xcvii <https://mccollum.house.gov/media/press-releases/mccollum-applauds-new-fda-warning-about-harmful-skin-lightening-products>

## **EXHIBIT FF**



## The Rapid Alert System for Non-Food Products (RAPEX)

### Notification Reference: A12/0088/13

<b>Risk level</b>	Serious risk
<b>Product user</b>	Consumer
<b>Notifying country</b>	United Kingdom
<b>Product category</b>	Cosmetics
<b>Product</b>	Skin-lightening product
<b>Brand</b>	Shaheen Cosmetic
<b>Name</b>	Face Fresh Beauty Cream
<b>Type/number of model</b>	Unknown Batch number: No 1192 - MFG 1 3 12 EXP 1 3 14.
<b>Batch number/Barcode</b>	1 41960 001908
<b>OECD Portal Category</b>	
<b>Description</b>	Yellow cardboard packaging containing whitening cream in a white plastic pot.
<b>Country of origin</b>	Pakistan
<b>Counterfeit</b>	
<b>Risk type</b>	Chemical
<b>Risk description</b>	The product poses a chemical risk because it contains a mercury compound (4620mg/kg) as a skin-lightening substance. The product does not comply with the Cosmetics Directive 76/768/EEC.
<b>Measures adopted by notifying country</b>	<b>Voluntary measures:</b> Withdrawal of the product from the market.
<b>Products were found and measures were taken also in</b>	
<b>Images</b>	


## **EXHIBIT GG**



Greenfire L x | Inbox (72) x | 2023 Karis x | Clio for Co x | CREMA LA x | crema la m x | Mercury in x | List of Face x

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## ENVIRONMENTAL HEALTH INVESTIGATIONS BRANCH

### Skin Creams Containing Mercury

CDPH has either tested or provided other State agencies technical assistance for the below labeled and unlabeled products. All were found to contain the harmful chemical, mercury. Face creams containing mercury are advertised to remove blemishes, smooth wrinkles, and lighten or brighten skin. Mercury is not a listed ingredient on labeled and unlabeled products.

**Do not sell or use these creams.**

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Unlabeled









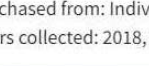


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About EHIB

<p><b>"74" Cream</b> Made in: Unknown Purchased from: Community market Year collected: 2019</p> 	<p><b>Mamá Cata</b> Made in: Mexico Purchased from: Community market Year collected: 2022</p> 	<p><b>Unlabeled - "Crema de Casa"</b> Made in: Unknown Purchased from: Unknown Year collected: Unknown</p> 
<p><b>Aquamarly Crema</b> Made in: Mexico Purchased from: Community market Year collected: 2012</p> 	<p><b>Maravillosa Crema Reneradora</b> Made in: Mexico Purchased from: Internet Year collected: 2022</p> 	<p><b>Unlabeled - "Crema de Desmanchadora"</b> Made in: Unknown Purchased from: Unknown Year collected: 2023</p> 
<p><b>Best</b> Made in: Unknown Purchased from: Community market Year collected: 2019</p> 	<p><b>Milk Cream</b> Made in: Likely Cambodia Purchased from: Community market Year collected: 2019</p> 	<p><b>Unlabeled - "Crema Esparza"</b> Made in: Mexico Purchased from: Individual Years collected: 2018, 2019</p> 

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Product Name	Made in	Purchased from	Year collected
Block & White, Radiance SPF 15 Whitening Face Powder	Philippines	Community market	2012
CCM Cream	Likely Cambodia	Community market	2020
Monsepa Bleaching Express Peeling	China	Community	
Mireya	Mexico	Unknown	Unknown
Unlabeled - "Crema Jimena"	Unknown	Community market	2019, 2020
Unlabeled - "Dia"	Likely Mexico	Community market	2021

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cdph.ca.gov/Programs/CCDPHP/DEODC/EHIB/CPE/Pages/CreamsTested4Mercury.aspx

 <p><b>Chandni Lightening Cream</b> Made in: Pakistan Purchased from: Internet Year collected: 2020</p>	 <p><b>Monsepa Bleaching Express Peeling</b> Made in: China Purchased from: Community market Year collected: 2012</p>	 <p><b>Unlabeled - "Noche"</b> Made in: Likely Mexico Purchased from: Community market Year collected: 2021</p>
 <p><b>Chupa Manchas</b> Made in: Mexico Purchased from: Community market Year collected: 2021</p>	 <p><b>Natural Body Recipe Skin Whitening Powder</b> Made in: Philippines Purchased from: Community market Year collected: 2012</p>	 <p><b>Unlabeled</b> Made in: Mexico Purchased from: Individual Year collected: 2019</p>
 <p><b>Clara Luna</b> Made in: Mexico Purchased from: Unknown</p>	 <p><b>Nunn Care</b> Made in: Mexico Purchased from: Internet Years collected: 2019, 2020, 2021, 2023</p>	 <p><b>Unlabeled</b> Made in: Cambodia Purchased from: Unknown Year collected: 2019</p>










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 <p><b>Delicate Cream</b> Made in: South Asia Purchased from: Unknown Year collected: 2019</p>	 <p><b>One Today - Dang Duong Cosmetics</b> Made in: Vietnam Purchased from: Community market Year collected: 2019</p>	 <p><b>Unlabeled</b> Made in: Cambodia Purchased from: Unknown Year collected: 2019</p>
 <p><b>Dr. Japan Nano</b> Made in: Thailand Purchased from: Community market Year collected: 2019</p>	 <p><b>P-Care</b> Made in: Thailand Purchased from: Unknown Year collected: 2019</p>	 <p><b>Unlabeled</b> Made in: Cambodia Purchased from: Unknown Year collected: 2019</p>
 <p><b>Elia's Natural</b> Crema Facial limpiadora y...</p>	 <p><b>Phone Cream</b> Made in: Likely Cambodia</p>	 <p><b>Unlabeled</b></p>

www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHIB/CPE/.../Unlabeled (5)).png









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 <p><b>Elid's Natural</b> Made in: Likely Mexico Purchased from: Community Market Year collected: 2023</p>	 <p><b>Phone Cream</b> Made in: Likely Cambodia Purchased from: Flea market Year collected: 2020</p>	 <p><b>Unlabeled</b> Made in: Mexico Purchased from: Unknown Year collected: 2020</p>
 <p><b>Eskinol Skin Therapy Gluta-Milk Whitening Face Powder</b> Made in: Philippines Purchased from: Community market Year collected: 2012</p>	 <p><b>Piel de Seda</b> Made in: Mexico Purchased from: Unknown Year collected: 2016</p>	 <p><b>Unlabeled</b> Made in: Mexico Purchased from: Unknown Year collected: 2020</p>
 <p><b>Pomada de la Campana del Dr. Bell</b> (Tainted after purchase and resold) Made in: Mexico Purchased from: Facebook</p>	 <p><b>Pomada de la Campana del Dr. Bell</b> (Tainted after purchase and resold) Made in: Mexico Purchased from: Facebook</p>	 <p><b>Unlabeled</b> Made in: Unknown Purchased from: Unknown</p>

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Product Name	Made in	Purchased from	Years collected
 <b>Gluta Speed White Sakura</b> Made in: Thailand Purchased from: Community market Year collected: 2019	Thailand	Community market	2019
 <b>Golden Pearl Beauty Cream</b> Made in: Pakistan Purchased from: Community market Year collected: 2019	Pakistan	Community market	2019
 <b>Pond's Clarant B3</b> (Tainted after purchase and resold) Made in: Mexico Purchased from: Unknown Years collected: 2019, 2020	Mexico	Unknown	2019, 2020
 <b>Pond's Rejuveness</b> (Tainted after purchase and resold) Made in: Mexico Purchased from: Individual Years collected: 2019, 2020	Mexico	Individual	2019, 2020
 <b>POP Cream</b> Made in: Thailand	Thailand		
 <b>Unlabeled</b> Made in: Unknown Purchased from: Individual Year collected: 2020	Unknown	Individual	2020
 <b>Unlabeled</b> Made in: Unknown Purchased from: Individual Year collected: 2021	Unknown	Individual	2021
 <b>Unlabeled</b> Made in: Unknown Purchased from: Unknown Year collected: 2020	Unknown	Unknown	2020

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<p><b>Beauty Cream</b> Made in: Pakistan Purchased from: Community market Year collected: 2019</p> 	 <p><b>POP Cream</b> Made in: Thailand Purchased from: Unknown Years collected: 2012, 2019</p>	 <p><b>Unlabeled</b> Made in: Unknown Purchased from: Unknown Year collected: 2020</p>
<p><b>Goree Beauty Cream</b> Made in: Pakistan Purchased from: Community market, Internet Year collected: 2019</p> 	 <p><b>Q-Nic Care White Armpit Whitening</b> Made in: Thailand Purchased from: Unknown Year collected: 2019</p>	 <p><b>Unlabeled</b> Made in: Mexico Purchased from: Unknown Year collected: Unknown</p>
<p><b>JiaoLi HuiChunSu Face Cream 7-Day Specific Eliminating Freckle</b> Made in: China Purchased from: Community market Year collected: 2012</p>	 <p><b>Qian Mei Whitening Cream</b> Made in: Unknown</p>	

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<p><b>JiaoLi HuiChunSu Face Cream 7-Day Specific Eliminating Freckle</b>            Made in: China            Purchased from: Community market            Year collected: 2012</p> 	 <p><b>Qian Mei Whitening Cream</b>            Made in: Unknown            Purchased from: Flea market            Year collected: 2020</p>
<p><b>JiaoLi HuiChunSu Miraculous Cream</b>            Made in: China            Purchased from: Community market            Year collected: 2014</p> 	 <p><b>Rosabell Crema</b>            Made in: Mexico            Purchased from: Individual            Year collected: 2023</p>
<p><b>JiaoLi HuiChunSu Whitening Speckles Removed Cream AB Set</b>            Made in: China            Purchased from: Community market            Year collected: 2012</p>	 <p><b>San Ruby Beauty Whitening Cream</b>            Made in: China            Purchased from: Community</p>







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 <p><b>JiaoLi HuiChunSu 10-Days Eliminating Freckle Day and Night</b> Made in: China Purchased from: Internet Year collected: 2013</p>	 <p><b>Shichade Tokyo</b> Made in: Japan Purchased from: Community market Year collected: 2019</p>
 <p><b>KIM Ginseng and Pearl Cream</b> Made in: Thailand Purchased from: Community market Year collected: 2019</p>	 <p><b>Spot Remover Cream</b> Made in: Likely Cambodia Purchased from: Community market Year collected: 2019</p>
	


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**KIM Pearl and Snow Lotus Cream**  
Made in: Thailand  
Purchased from: Community market  
Year collected: 2019



**Top Beauty: Whitening Night Cream**  
Made in: Unknown  
Purchased from: Community market  
Year collected: 2012



**La Crema de Rebeca**  
Made in: Mexico  
Purchased from: Swap meet  
Years collected: 2012, 2018, 2019, 2021



**La Milagrosa**  
Made in: Mexico

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**La Milagrosa**  
Made in: Mexico  
Purchased from: Internet, Swap meet  
Years collected: 2018, 2019, 2020, 2022



**La Tía Mán**  
Made in: Mexico  
Purchased from: Community market, Individual, Swap meet  
Years collected: 2018, 2019, 2023

### Products containing mercury tested outside of California

- [Skin Lightening Products Found to Contain Mercury \(PDF\)](#) - Minnesota Department of Health
- [Database of consumer products tested for heavy metals](#) - New York City Department of Health and Mental Hygiene
- [Mercury-added Skin-lightening Creams \(PDF\)](#) - European Environmental Bureau
- [Bangladesh Standards and Testing Institution \(BSTI\) bans 8 products for "excessive mercury"](#)

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Purchased from: Community market, Individual, Swap meet  
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